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## The Protection of Unaccompanied Migrant Minors Under International Human Rights Law: Revisiting Old Concepts and Confronting New Challenges in Modern Migrant Flows

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# THE PROTECTION OF UNACCOMPANIED MIGRANT MINORS UNDER INTERNATIONAL HUMAN RIGHTS LAW: REVISITING OLD CONCEPTS AND CONFRONTING NEW CHALLENGES IN MODERN MIGRATION FLOWS

EIRINI PAPOUTSI\*

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## I. INTRODUCTION

In view of the greatest humanitarian crisis the world has witnessed since World War II, an estimated 68.5 million people worldwide have been forced to flee their homes.<sup>1</sup> Among them a total of 25.4 million are refugees, over half of whom are under the age of 18.<sup>2</sup> The rise in numbers of unaccompanied migrant minors reaching the borders of states alone has become a global issue states are called to immediately address. According to UNICEF's statistics, out of 33,000 children that arrived in Europe through the Mediterranean routes in 2017, an estimated 20,000 were unaccompanied and separated children.<sup>3</sup> In addition, IMO's 2018 Annual Report revealed that the number of unaccompanied minors fleeing the countries of Central America has increased by 1,200 per cent between 2011 and 2014.<sup>4</sup> The numerical illustration for the regions of Africa and Asia further confirm the great extent child migration has known in recent years. In 2017, 29.8 percent of Africa's migrants and 17.5 percent of Asia's migrants were children.<sup>5</sup>

Unaccompanied children usually decide to make the dangerous journey alone fleeing from armed conflicts, exploitation, persecution and poverty in their home country, while in many occasions they are sent from their own family in pursuit of a better future.<sup>6</sup> Being the weakest

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1. UNHCR, Global Trends: Forced Displacement in 2017, at 2 (June 25, 2018) [hereinafter *Forced Displacement in 2017*], <https://www.unhcr.org/5b27be547.pdf>.

2. *Id.*

3. *Latest Statistics and Graphics on Refugee and Migrant Children*, UNICEF, <https://www.unicef.org/eca/emergencies/latest-statistics-and-graphics-refugee-and-migrant-children> (last visited Sept. 10, 2019).

4. International Organization of Migration [IOM], *World Migration Report 2018*, at 80 (2018), [https://www.iom.int/sites/default/files/country/docs/china/r5\\_world\\_migration\\_report\\_2018\\_en.pdf](https://www.iom.int/sites/default/files/country/docs/china/r5_world_migration_report_2018_en.pdf).

5. *Data on Child Migrants and Refugees for 2017*, UNICEF (Dec. 14, 2018), <https://data.unicef.org/topic/child-migration-and-displacement/migration/>.

6. See Rep. of the H.R.C., Global Issue of Unaccompanied Migrant Children and Adolescents and Human Rights; Rep. of the Human Rights Council Advisory Committee, ¶¶ 7–9, U.N. Doc. A/HRC/33/53 (2016) [hereinafter *Unaccompanied Migrant Children*] (explaining that a child's reasons for migrating are often multilayered and the common factors include lack of protection from "violence, poverty, lack of opportunities, and poor access to education and health services").

victims of human rights abuses, unaccompanied minors regularly face the threat of becoming victims of human trafficking.<sup>7</sup> The special needs and vulnerabilities of this specific category of migrants raise complex human rights protection issues, that require an effective and joint response of all stakeholders involved. Human rights of migrants, as such so far restrictively exist, should meet and synchronize with the fundamental human rights of the child established in traditional human rights instruments. For said approach to be fruitful and lead to effective future solutions, the contemporary conceptualization of the definitions and human rights of the unaccompanied migrant minors is necessary.

Considering the challenges modern migration crisis has posed on both a practical and theoretical basis, the article takes a thorough look at the protection of unaccompanied minors under international human rights law with the aim to present the main issues that need to be revisited and the areas that require further development. Precisely, *Section II* deals with the detailed analysis of the definition of the ‘unaccompanied minors’ notion and the intertwined regimes of protection of unaccompanied children under international human rights and refugee law. Subsequently, *Section III* draws the framework of the fundamental rights of unaccompanied minors through observation of states’ migration policies and laws, recent judicial decisions as well as non-state actors’ practices. The structure of the human rights protection scheme, evaluated hereinunder, is composed of states’ primary obligation of non-refoulement; care and accommodation rights in initial proceedings; guardianship; legal representation and access to asylum procedures; and, finally, the family reunification right.

Finally, *Section IV* discusses the demand to find durable solutions in favor of the best interests of unaccompanied minors focusing on two major topics of the global dialogue: the reinforcement of human rights’ applicability against state practices of “securitization” and externalization of border controls, as well as the meaning of structuring “life projects” for unaccompanied minors as a future solution.

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7. See Unaccompanied Migrant Children, *supra* note 6, at ¶ 57 (suggesting children who lack documentation from their country of origin are more vulnerable to human trafficking because it is difficult for a foreign country to regulate their migration status).

## II. DEFINING THE “UNACCOMPANIED MINORS” NOTION: A COMPREHENSIVE EXAMINATION OF THE PARALLEL REGULATORY FRAMEWORKS

Like in many cases of debatable topics, defining the key notion of a phenomenon in a universally accepted way is difficult. Yet, it is the most important part of the solution. In the present case, the particularity of the “unaccompanied migrant minors” notion lays on its multifaceted aspects and meanings.<sup>8</sup> The legal implications of the simultaneous existence of the terms ‘migrant’ and ‘minor’, both defined by the substantial adjective “unaccompanied” are conceivable only through the specific examination of each notion.<sup>9</sup>

Article 1 of the CRC defines the term ‘children’ as the human beings below the age of 18.<sup>10</sup> Such a generic definition, without further limitations or prerequisites, stipulates the wide protection CRC intends to establish.<sup>11</sup> Paragraph 9 of the preamble, serving as an interpretation tool for the entire convention,<sup>12</sup> articulates the general protection that a child shall enjoy “by reason of his physical and mental immaturity.”<sup>13</sup> This wording depicts the generally accepted vulnerable status of children, irrespective of any other factors, but their need for special safeguard and care. The Committee on the Rights of the Child has adopted four core principles applicable to all children found in the territory of the state

8. See, e.g. Mark Odello, *Unaccompanied Minors: Rights and Protections*, 19 INT'L J. REFUGEE L. 779, 780 (2007) (book review) (comparing author's definition as children “who are not being cared for by an adult who . . . is responsible for doing so” to the United Nation's High Commissioner for Refugees' definition as “separated children . . . from both parents or . . . primary caregiver.”).

9. See Odello, *supra* note 8, at 780 (explaining that the author mainly deals with unaccompanied minors but that refugee minors are also “a major issue of consideration”).

10. Convention on the Rights of the Child art. 1, Nov. 20, 1989, 1577 U.N.T.S. 44 [hereinafter CRC].

11. See Evarist Baimu, *International Protection of Children*, in MAX PLANCK ENCYCLOPEDIA OF PUBLIC INTERNATIONAL LAW ¶¶ 4–7 (2013) (stating that State Parties must implement treaty-based obligations in all appropriate measures to protect children's rights, including right to nationality, family, education, health, and adequate standard of living).

12. See Vienna Convention on the Law of Treaties art. 31, May 23, 1969, 1155 U.N.T.S. 331 (clarifying that treaties are to be read in good faith and under their ordinary meaning).

13. CRC, *supra* note 10, art. 9.

parties, namely the non-discrimination, the best interest of the child, the right to life, survival and development and the respect for the child's view.<sup>14</sup> These principles appear to have formed the customary rules on the child's protection and guarantee that states act in favor of the child.<sup>15</sup>

However, contrary to the above, the CRC falls short to provide a similar high-standard protection to children migrants and refugees. This retreat has accepted a lot of criticism, since the CRC, a rather enriched and developed instrument, falls back in cases of international migration.<sup>16</sup> Article 22 of the CRC provides for the obligation of states to take all appropriate measures for a child "who is seeking refugee status or who is considered a refugee *in accordance with applicable international or domestic law and procedures.*"<sup>17</sup> The key instrument pertaining to the international protection of refugees, the *1951 United Nations Convention Relating to the Status of Refugees*, defines the refugee as a person who is outside the country of his nationality due to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.<sup>18</sup> Such a restrictive enumeration of the grounds of persecution and the subjective criterion of "fear" do not secure a universal approach leaving thus the group of migrant minors outside the scope of Article 22 of the CRC.<sup>19</sup>

The protection gap that is created within the CRC, with respect to the

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14. Baimu, *supra* note 11, at ¶ 7; see Bruno Simma & Philip Alston, *The Sources of Human Rights Law: Custom, Jus Cogens, and General Principles*, 12 AUST. YR. BOOK INT'L L. 82, 102–03 (1988-1989) (explaining how general principles accepted in an international setting may now "percolate down" rather than being elevated from the domestic level).

15. See Dina Supaat, *Establishing the Best Interests of the Child Rule as an International Custom*, 5 INT'L J. BUS., ECON., & L. 109, 111 (2014) (suggesting that states rely on the CRC for guidance in handling matters affecting children as they often need special care and have unique needs due to their immaturity and lack of experience).

16. See Baimu, *supra* note 11, ¶ 18 (stating that the CRC definition of a refugee child is too narrow and restrictive because it focuses on the individual fear of persecution ignoring the group dimension).

17. CRC, *supra* note 10, art. 22.

18. Convention Relating to the Status of Refugees art. 1, July 28, 1951, 189 U.N.T.S. 152 [hereinafter CRSR].

19. See Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico, and Panama art. 3(3), Nov. 22, 1984, <https://www.unhcr.org/en-us/about-us/background/45dc19084/cartagena-declaration-refugees-adopted-colloquium-international-protection.html> (recommending a broader to definition of 'refugee' to include those fleeing violent and unstable circumstances).

rather outmoded rules of international refugee law is superseded through a “weight and balance” method of the parallel obligations arising out of the two regimes.<sup>20</sup> States, upon arrival of unaccompanied and separated children at their borders, primarily examine their status implementing national policies so as to ensure whether these children satisfy the definition of “refugee” as set above.<sup>21</sup> However, the restrictiveness of the existing definitions and the fact that most of the children are part of “mixed migration” movements<sup>22</sup> render their protection impossible.<sup>23</sup> The most decisive criterion that, according to the present analysis, should be taken into account by states is -not their potential migrant or refugee profile— but their “child” profile.<sup>24</sup>

The parallel obligation of states to protect and fulfil the rights of unaccompanied children emanates from the wider and more protective scope of the human rights of the child.<sup>25</sup> The CRC provides for this obligation in Article 2, which stipulates that “[S]tates Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child’s [ . . . ] race, color, sex [ . . . ] birth or other status.”<sup>26</sup> Hence, the Convention’s scope covers all instances of children being under the

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20. See JASON POBJOY, *THE CHILD IN INTERNATIONAL REFUGEE LAW* 47–48 (2017) [hereinafter POBJOY, *THE CHILD IN INTERNATIONAL REFUGEE LAW*] (analyzing the interaction between the CRC and international refugee law).

21. See Randall Hansen, *State Controls: Borders, Refugees, and Citizenship*, in *THE OXFORD HANDBOOK OF REFUGEE AND FORCED MIGRATION STUDIES* 257–58 (Elena Fiddian-Qasbiyeh et al. eds., 2014) (explaining how states’ varying definitions of a refugee impacts categorization of people at the border).

22. See UNHCR, *Refugee Protection and Mixed Migration: The 10-Point Plan in Action*, at 8 (Feb. 2011), <https://www.unhcr.org/50a4c2b09.pdf> (arguing that the ongoing development of migration laws can provide more assistance to unaccompanied/separated children traveling within mixed movements).

23. See UNHCR, *Children on the Run: Unaccompanied Children Leaving Central America and Mexico and the Need for International Protection*, at 23 (2014) [hereinafter *Children on the Run*], <https://www.unhcr.org/56fc266f4.html> (explaining that children at the border are asked questions designed to determine whether a more in-depth investigation is needed to determine any protection needs).

24. See *id.* (providing an overview of children’s reasons for leaving their country and the patterns of harm children disclosed).

25. See POBJOY, *THE CHILD IN INTERNATIONAL REFUGEE LAW*, *supra* note 20, at 196 (“Article 3 of the CRC provides a critical additional safeguard for children seeking international protection.”).

26. CRC, *supra* note 10, art. 2.

jurisdiction of states, while it does not permit any deviations on grounds of the children's status.<sup>27</sup> This was explicitly stipulated in the 2016 *New York Declaration*, where states *inter alia* undertook the responsibility to protect the rights of all refugee and migrant children, "regardless of their status and giving primary consideration at all times to the best interests of the child."<sup>28</sup>

This child-centric approach of states' duties in migration cases is also implied by the "primary consideration" to safeguard the child's best interests.<sup>29</sup> Article 3 of the CRC provides for the "best interest" principle that guarantees that the child constitutes the "central component" of all kind of procedures, decisions and measures adopted by States.<sup>30</sup> It specifically requires the development of a comprehensive child protection system designed to put children as a priority in all stages of migration, from the first encounter with the states' authorities until the implementation of integration or relocation schemes.<sup>31</sup> This means that procedures are being conducted in a child-centered manner with respect to the minors' characteristics and vulnerabilities, including but not limited to age, development, maturity, experiences, etc.<sup>32</sup> An indicative example can be brought from the initial stage of identification and screening of migrant children. A mere confirmation that an identified minor is in potential need for further protection is sufficient evidence

27. *Id.*

28. G.A. Res. 71/1, *New York Declaration for Refugees and Migrants*, ¶ 32 (Sept. 19, 2016).

29. See Comm. on the Rights of the Child, *General Comment No. 14 on the Right of the Child to Have His or Her Best Interests Taken as a Primary Consideration*, ¶¶ 36–40, U.N. Doc. CRC/C/GC/14 (May 29, 2013) [hereinafter *Comment No. 14*] (stating that the best interests of a child must be of paramount consideration over all other considerations because children are less likely to make a strong case for their own interests).

30. See Comm. on the Rights of the Child, *General Comment No. 6: Treatment of Unaccompanied and Separated Children Outside Their Country of Origin*, ¶¶ 19–22, U.N. Doc. CRC/GC/2005/6 (Sept. 1, 2005) [hereinafter *Comment No. 6*] (requiring the best interests of the child to remain the primary focus throughout the process of determining short and long-term protections for the child).

31. See UNHCR & United Nations Children's Fund [UNICEF], *Safe & Sound: What States Can Do To Ensure Respect For The Best Interests Of Unaccompanied And Separated Children In Europe*, at 45 (Oct. 2014) [hereinafter *Safe & Sound*] (arguing that keeping the best interests of a child firmly in focus through the migration process will produce a "durable solution" that is both "long-term and sustainable" for the child's needs).

32. See *Comment No. 14*, *supra* note 29, ¶¶ 48–51; 417/2007 Lastensuojelulaki [Child Welfare Act] (Fin.).

under the present view to refer him to a special agency.<sup>33</sup>

Lastly, the “unaccompanied” manner of travelling is a determining element when assessing states’ obligations with respect to migrant children. The notion of the unaccompanied minors-regularly used in combination with the term of “separated children”<sup>34</sup>- is defined by UNHCR as a child “separated from both parents and other relatives and not being cared for by an adult who, by law or custom, has responsibility to do so,”<sup>35</sup> while Article 20 of the CRC refers to children “temporarily or permanently deprived of his or her family environment.”<sup>36</sup> The specifically vulnerable status of this category of infant migrants renders the protection of their fundamental rights completely necessary. Regardless of any classification to asylum or humanitarian status- since in the first occasion, asylum procedures are triggered to the implementation of local integration or resettlement schemes- the identification of a solution in the best interest of the child remains the primary obligation of states by a human rights perspective.<sup>37</sup>

Having thus concluded the analysis of the “unaccompanied minors” notion, it is beyond any doubt that international human rights law introduces an independent source of obligations when dealing with cases of migrant children deprived of their family. The CRC can have a major contribution and provide for alternatives of international protection for unaccompanied migrant children. The primary responsibility of states to protect all children under their jurisdiction<sup>38</sup> based on their best interest should supersede any insufficient migration practices and protection

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33. See *Report on the Situation of Unaccompanied Minors in the E.U.*, at 10 (Aug. 26, 2013), <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+REPORT+A7-2013-0251+0+DOC+PDF+V0//EN>.

34. UNHCR, *Guidelines on Determining the Best Interests of the Child*, at 8 (2008) [hereinafter *Guidelines on the Best Interests of the Child*], <https://www.unhcr.org/4566b16b2.pdf>.

35. UNHCR, *Guidelines on Policies and Procedures in Dealing with Unaccompanied Children Seeking Asylum*, (Feb. 1997) [hereinafter *Guidelines on Dealing with Unaccompanied Children Seeking Asylum*], <https://www.unhcr.org/3d4f91cf4.pdf>.

36. CRC, *supra* note 10, at art. 20.

37. See Inter-agency Working Grp. on Unaccompanied & Separated Children, *Field Handbook on Unaccompanied and Separated Children*, at 258 (2017), <https://www.iom.int/sites/default/files/HANDBOOK-WEB-2017-0322.pdf> (“[F]or all refugee UASC, a best interests determination (BID) should be undertaken when considering all appropriate durable solutions.”).

38. CRC, *supra* note 10, art. 2.

gaps in international refugee law. In view of this, it is necessary to draw the lines of this obligation, by profoundly examining the fundamental rights of unaccompanied minors, as such shall enjoy increased protection.

### III. THE FUNDAMENTAL HUMAN RIGHTS OF UNACCOMPANIED MINORS IN THEORY AND PRACTICE

#### A. THE PRINCIPLE OF NON-REFOULEMENT

Non-refoulement is a principle of paramount importance when dealing with migration issues and a “powerful tool in human rights’ implementation.”<sup>39</sup> Particularly, non-refoulement safeguards the human rights of people who find themselves in the territory of another state and may face serious abuses in case they will be returned to their country of origin or a third country.<sup>40</sup> The first section of Article 33 of the 1951 Refugee Convention defines non-refoulement as the prohibition on states to “expel or return (*refouler*) a refugee in any manner whatsoever to the frontiers of territories where his (or her) life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”<sup>41</sup> This obligation, which, according to various scholars has gained a customary<sup>42</sup> or even a *jus cogens* nature,<sup>43</sup> provides for an *ultimum* protection for refugees on the grounds

39. E.U. Agency for Fundamental Rights [FRA], *Scope of the Principle of Non-Refoulement in Contemporary Border Management: Evolving Areas of Law*, at 7 (2016), [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2016-scope-non-refoulement-0\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2016-scope-non-refoulement-0_en.pdf).

40. See GUY GOODWIN-GILL & JANE MCADAM, *THE REFUGEE IN INTERNATIONAL LAW* 201 (3d ed. 2007) (explaining what non-refoulement is in refugee law terms).

41. CRSR, *supra* note 18, art. 33.

42. See Cathryn Costello & Michelle Foster, *Non-Refoulement as Custom and Jus Cogens? Putting the Prohibition to the Test*, 46 NETH. Y.B. INT’L L. 273, 282 (Maarten den Heijer & Harmen van der Wilt eds., 2015) (stating that non-refoulement has become a “customary norm” within international law).

43. *Accord.* Alice Farmer, *Non-Refoulement and Jus Cogens: Limiting Anti-Terror Measures that Threaten Refugee Protection*, 23 GEO. IMMIGR. L.J. 1, 22 (2008) (explaining the unconditional and *jus cogens* nature that non-refoulement has taken on in international law); Jean Allain, *The Jus Cogens Nature of Non-Refoulement*, 13 INT’L J. REFUGEE L. 533, 539–41 (2001) (reminding the reader of the history of non-refoulement and how it

of securing their life or freedom from existing threats.

From a human rights perspective, non-refoulement serves as a 'guardian' of various human rights norms, obliging states not to return or expel individuals to a territory that may face inhuman treatment, threat of their liberty and life or other human rights abuses.<sup>44</sup> Specifically, such prohibition is powerfully expressed in various instruments, including Article 7 of the ICCPR, Article 22 of the American Convention of Human Rights, Article 3 of the Convention against Torture, Article 3 of the European Convention on Human Rights, and Article II (3) of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa.<sup>45</sup>

Although the CRC does not make an explicit reference to the notion of non-refoulement, the Committee on the Rights of the Child on its *General Comment no. 6* stipulates that “*in fulfilling the obligations under the Convention, States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child*” (emphasis added).<sup>46</sup> The general comment, serving as an authoritative interpretation of the Convention,<sup>47</sup> introduces a broad definition of non-refoulement based on the crucial criterion of “irreparable harm,” which includes a wide set of rights.<sup>48</sup> The Committee specifies the notion of

became a *jus cogens* principle).

44. See OHCHR, *The Principle of Non-Refoulement under International Human Rights Law*, <https://www.ohchr.org/Documents/Issues/Migration/GlobalCompactMigration/ThePrincipleNon-RefoulementUnderInternationalHumanRightsLaw.pdf> (last visited Nov. 19, 2019).

45. See GOODWIN-GILL & MCADAM, *supra* note 40, at 208–11 (pointing to where non-refoulement has been enshrined within international treaties).

46. *Comment No. 6*, *supra* note 30, ¶ 27

47. See Kerstin Mechlem, *Treaty Bodies and the Interpretation of Human Rights*, 42 VAND. J. TRANSNAT'L L. 905, 929–30 (2009) (restating that scholars have given the General Comment much weight in determining the interpretation of treaties); see also Comm'n on Hum. Rts., *The Right to Food: Rep. on the Third Expert Consultation on the Right to Food*, ¶ 14, U.N. Doc. E/CN.4/2001/148 (Mar. 30, 2001); Comm'n on Hum. Rts., *The Right to Food: Rep. of the High Commissioner for Human Rights*, ¶ 58, U.N. Doc. E/CN.4/2000/48 (Jan. 13, 2000).

48. See Jason M. Pobjoy, *A Child Rights Framework for Assessing the Status of Refugee Children*, in CONTEMPORARY ISSUES IN REFUGEE LAW 91, 130 (Satvinder Juss & Colin Harvey eds., 2013) (showcasing phrases that have been interpreted to give the principle of non-refoulement a broad definition); see also Alice Farmer, *A Commentary on the Committee on the Rights of the Child's Definition of Non-Refoulement for Children: Broad Protection*

harm by reference to Article 37 of the CRC as unlawful or arbitrary deprivation of life, sentence of life without parole, or inappropriate detention.<sup>49</sup> Moreover, Article 6 of the CRC is interpreted by the Committee as an area where irreparable harm can take the form of “survival and development” risks, while underage military recruitment and participation in the hostilities also constitute instances of serious, irreparable harm.<sup>50</sup>

The above affirms the broader definition of non-refoulement in the context of children’s human rights protection, which goes beyond its respective articulation under refugee law.<sup>51</sup> UNHCR, in its *2007 Advisory Opinion on the Extraterritorial Application of Non-refoulement Obligations*, recognized the norm’s extended protective power stipulating at the same time its non-negotiable nature;<sup>52</sup> in particular, this entails the prohibition of balancing tests on grounds of national security issues, since no deviation from the rule can be justified.<sup>53</sup>

The review of the principle of non-refoulement is nowadays required by the demand to address widespread migration practices of states and specifically, the so-called migrants’ “pushbacks,”<sup>54</sup> that usually take the form of “maritime interception.”<sup>55</sup> Said practices are extremely

for *Fundamental Rights* 40–42 (Fordham L. Sch., *Res Gestae* Paper 8, 2011) [hereinafter Farmer, *Broad Protection for Fundamental Rights*], [https://ir.lawnet.fordham.edu/res\\_gestae/8/](https://ir.lawnet.fordham.edu/res_gestae/8/) (explaining the how and why the definition for the principle of non-refoulement is so expansive).

49. See *id.* at 41–42 (specifying the notion of harm within international refugee law and the principle of non-refoulement).

50. *Comment No. 6, supra* note 30, ¶¶ 27–28.

51. See Farmer, *Broad Protection for Fundamental Rights, supra* note 48, at 42–44 (distinguishing the standards of harm between traditional international refugee law and international children’s refugee law).

52. U.N. High Comm’r for Refugees, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations Under the 1951 Convention Relating to the Status of Refugees and Its 1967 Protocol*, ¶ 11 (2007), <https://www.unhcr.org/4d9486929.pdf>.

53. See Farmer, *Broad Protection for Fundamental Rights, supra* note 48, at 44 (showing that there are no exceptions to non-refoulement under the CRC).

54. Hum. Rts. Watch, *Pushed Back, Pushed Around: Italy’s Forced Return of Boat Migrants and Asylum Seekers, Libya’s Mistreatment of Migrants and Asylum Seekers*, at 7–10 (2009), <https://www.hrw.org/report/2009/09/21/pushed-back-pushed-around/italys-forced-return-boat-migrants-and-asylum-seekers> [hereinafter *Pushed Back, Pushed Around*].

55. U.N. High Comm’r for Refugees, *Interception of Asylum-Seekers and Refugees: The International Framework and Recommendation for a Comprehensive Approach*, ¶¶ 3, 12, U.N.

dangerous and in cases where the forcibly returned migrants are children, without family or any guardian, their lives are severely exposed to threats and human rights violations.<sup>56</sup> States in order to tackle illegal migration adopt “measures [. . . ] in order to prevent, interrupt or stop the movement of persons without the required documentation crossing international borders by land, air or sea, and making their way to the country of prospective destination.”<sup>57</sup>

The ECtHR in its 2012 judgment on *Hirsi Jamaa and others v. Italy* case<sup>58</sup> remarkably addressed an incident where a boat with 200 immigrants from Somalia and Eritrea was intercepted by Italian authorities off the coast of Malta and was taken back to Libya.<sup>59</sup> In this case, the Court found Italy responsible for violating Article 3 of the ECHR, since it subjected these people to inhuman and degrading treatment, as well as Article 4 of the IV Additional Protocol pertaining to the prohibition of collective expulsions.<sup>60</sup> This was the first time the Court examined maritime interception as a form of illegal practice taking place on the high seas and affirmed the applicability of non-refoulement beyond the national territory of the state.<sup>61</sup>

What is important, however, for the present analysis, is that during these forcible pushbacks, unaccompanied migrant children- due to their especially vulnerable situation- suffer the most severe consequences.<sup>62</sup> They find themselves completely unprotected and deprived of their right to ask for asylum, international protection, family reunification or other

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Doc. EC/50/SC/CRP.17 (June 9, 2000) [hereinafter *Interception of Asylum-Seekers and Refugees*].

56. Comm. on the Rights of the Child, *Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Spain*, ¶¶ 42–44, U.N. Doc. CRC/C/ESP/CO/5-6 (Feb. 2, 2018).

57. *Interception of Asylum-Seekers and Refugees*, *supra* note 55, ¶ 10.

58. See *Hirsi Jamaa and Others v. Italy*, 2012-II Eur. Ct. H.R. 97.

59. See *id.* at 109.

60. See *id.* at 145.

61. EUR. CT. H.R., FACTSHEET - COLLECTIVE EXPULSIONS OF ALIENS: HIRSI JAMAA AND OTHERS, at 2 (July 2019), [https://www.echr.coe.int/Documents/FS\\_Collective\\_expulsions\\_ENG.pdf](https://www.echr.coe.int/Documents/FS_Collective_expulsions_ENG.pdf).

62. See JACQUELINE BHABA & MARY CROCK, *SEEKING ASYLUM ALONE – A COMPARATIVE STUDY: UNACCOMPANIED AND SEPARATED CHILDREN AND REFUGEE PROTECTION IN AUSTRALIA, THE U.K. AND THE U.S.* 150 (2007) (explaining the policies most devastating to unaccompanied minors).

forms of guardianship.<sup>63</sup> In some cases, they are forced back to their countries of departure within a period of few hours upon arrival at the states' borders.<sup>64</sup> Due to prompt returns and non-visible processes in many occasions, there is no a clear depiction of the numbers and identities of the unaccompanied children being victims of these policies.<sup>65</sup>

As a result, it can be supported that the principle of non-refoulement is nowadays at stake. The first and foremost obligation of a state not to return migrants and unaccompanied minors back in third countries, where they may endure human rights abuses, is questioned and unjustifiably circumvented.<sup>66</sup> The demand for strict adherence to this obligation shall be achieved through the comprehensive restructuring of migration policies and the allocation of responsibilities among the involved parties.

State authorities and other responsible agencies shall each time assess the risk of serious and irreparable harm that unaccompanied or separated minors may face in case of their return in an age and gender sensitive manner.<sup>67</sup> The best interest of each child, determined by their special needs and vulnerabilities, shall be ensured when implementing return policies.<sup>68</sup> As the ECtHR highlighted in the *Mubilanzila Mayeka and Kaniki*

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63. See *id.* (detailing what can be done to help unaccompanied minors survive refugee ordeals).

64. See Children on the Run, *supra* note 23, at 16 (noting that most unaccompanied Mexican children apprehended in the U.S. were returned to Mexico within “a day or two” in FY 2011, 2012, and 2013).

65. See Children on the Run, *supra* note 23, at 16 (observing that the rapid rate at which unaccompanied Mexican children in the U.S. are apprehended and returned to Mexico makes it difficult to determine the exact number of children deported, and even more difficult to identify them, their motives for coming, and their needs).

66. See E.U. Agency for Fundamental Rights [FRA], *Migrant Pushbacks a Growing Concern in Some Member States*, (Mar. 26, 2018), <https://fra.europa.eu/en/news/2018/migrant-pushbacks-growing-concern-some-member-states> (discussing how migrants to various E.U. states are turned back without a chance to assert their right to asylum).

67. See *Comment No. 6*, *supra* note 30, ¶ 27 (concluding that, before attempting to return a child to another country, a state must first determine whether the child would be at risk of “irreparable harm” if it were returned, and must factor the child’s age and gender into such considerations.).

68. See *Comment No. 6*, *supra* note 30, ¶ 84 (asserting that states may only return children to other states if doing so would be in the best interests of the child); see also Guidelines on the Best Interests of the Child, *supra* note 34, at 70 (noting that ensuring

*Mitunga v. Belgium* case, governments are under the obligation to take “requisite measures and precautions” against the possibility of inhuman treatment when a child is returned.<sup>69</sup> This, however, implies that risk assessment procedures and thorough examination of the circumstances have taken place under the light of the non-refoulement principle.

## B. CARE AND ACCOMMODATION IN INITIAL PROCEEDINGS

Apart from the primary obligation of states to comply with the principle of non-refoulement upon identification of an unaccompanied minor, special care and assistance mechanisms shall be established and operate in accordance to the children’s best interests and existing human rights standards. States’ vigilance to address the specific needs of unaccompanied minors arriving at their borders relies on the *a priori* establishment of efficient initial proceedings.<sup>70</sup> In view of the abovementioned human rights principles, States shall determine and prioritize their internal proceedings on a specially child-sensitive manner. Given also that in most cases the child’s right to life<sup>71</sup> is profoundly threatened—since a great number of migrant children are victims of organized crime and human trafficking that likely to cause them harm or even death<sup>72</sup>—securing their survival and development shall be the first

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the safety of migrant children is the most important factor in determining how states should treat them).

69. See *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006-XI Eur. Ct. H.R. 267, 293–94 (ruling that Belgium failed to fulfill this obligation in deporting the second applicant).

70. See *Comment No. 6*, *supra* note 30, ¶¶ 31, 32, 40 (requiring states to have mechanisms in place to ensure care for “unaccompanied or separated children outside their country of origin” prior to their arrival); see also Council of Europe, *Dialogue Across the Atlantic: Selected Case-Law of the European and Inter-American Human Rights Courts*, at 433–35 (2015) [hereinafter *Dialogue Across the Atlantic*], [https://www.echr.coe.int/Documents/Dialogue\\_Across\\_Atantic\\_ENG.pdf](https://www.echr.coe.int/Documents/Dialogue_Across_Atantic_ENG.pdf) (providing an overview of the characteristics of appropriate priority measures for the comprehensive protection of child migrants).

71. CRC, *supra* note 10, art. 6; International Covenant on Civil and Political Rights art. 6, Dec. 19, 1966, 999 U.N.T.S. 174 [hereinafter ICCPR]; American Convention on Human Rights art. 4, Nov. 22, 1969, 1144 U.N.T.S. 145 [hereinafter ACHR]; Convention for the Protection of Human Rights and Fundamental Freedoms art. 2(1), Nov. 4, 1950, 213 U.N.T.S. 224 [hereinafter CPHR].

72. See *Human Trafficking*, MIGRATION DATA PORTAL, <https://migrationdataportal.org/themes/human-trafficking> (last visited Sept. 15, 2019) (noting that “[a]t least 16% of identified victims . . . [of human trafficking] were

step taken by States towards their true care.<sup>73</sup>

For care and accommodation needs to be properly addressed, all receiving states shall foster common standards in unaccompanied minors' assistance. Age assessments—the requisite for care mechanisms to be triggered—are important even from a human rights perspective, since they ensure the “continuity and stability of care.”<sup>74</sup> Provided that they are being conducted in a safe, scientific manner based on the child's best interest as well as his/her physical and mental situation, social and cultural background, common methodologies can guarantee their special, uniform treatment throughout the entire process.<sup>75</sup> Similarly, interviews, registration and collection of data shall be conducted in a child-friendly environment by qualified professionals, and always in a language the child understands.<sup>76</sup> Only through thorough and human-oriented assessments, can state authorities identify children's special needs and work on the provision of quality care.

In this context, CRC Article 20 provides for states' primary obligation to ensure accommodation for children deprived of their family.<sup>77</sup> The

children” in 2015 and 2016); *see also* Children on the Run, *supra* note 23, at 24–28 (analyzing the statistics on violence experienced by migrant children leaving Central America and Mexico for the U.S.).

73. *See Comment No. 6, supra* note 30, ¶¶ 23–24 (concluding that the first obligation of states toward migrant children is to protect them from violence and exploitation).

74. *See* Daja Wenke & Turid Heiberg, *Guidelines: Promoting the Human Rights and Best Interests of the Child in Transnational Child Protection Cases*, at 49 (2015), [http://www.cbss.org/wp-content/uploads/2013/01/Guidelines\\_-\\_promoting\\_the\\_Human\\_Rights\\_and\\_the\\_Best\\_Interest\\_of\\_the\\_Child\\_in\\_Transnational\\_Child\\_Protection\\_Cases.pdf](http://www.cbss.org/wp-content/uploads/2013/01/Guidelines_-_promoting_the_Human_Rights_and_the_Best_Interest_of_the_Child_in_Transnational_Child_Protection_Cases.pdf) (arguing that a human rights perspective requires being mindful of the subject's age in order to ensure his or her long-term welfare).

75. *See* Separated Children in Europe Programme, *Position Paper on Age Assessment in the Context of Separated Children in Europe*, at 6–8 (May 2012) [hereinafter *Position Paper on Age Assessment*], <http://www.scepnetwork.org/images/16/163.pdf> (observing that since irregular age assessment methods can deprive children of the safeguards to which they are entitled as minors, common standards are needed between E.U. member states to ensure uniform respect for children's rights).

76. *See* U.N. High Comm'r for Refugees, *Asylum Processes: Fair and Efficient Asylum Procedures*, ¶ 46, U.N. Doc. EC/GC/01/12 (May 31, 2001) (holding that, as part of best practices for taking care of unaccompanied or separated children, they should be interviewed by specially trained personnel); *see also* *Position Paper on Age Assessment, supra* note 75, at 12 (asserting that professionals should always have their exchanges with unaccompanied migrant children be facilitated by cultural-linguistic mediators or translators).

77. *See* CRC, *supra* note 10, art. 20 (“When considering solutions [for caring for a

Committee on the Rights of the Child, through further analysis of the scope of Article 20, encourages states to assess *ad hoc* the special vulnerabilities of the child ensuring that his/her best interests are served.<sup>78</sup> The parameter of stability and continuity of accommodation is crucial for children's mental and physical health and thus, it should be based on either "foster homes or special reception centres," as the UNHCR stressed in the *Guidelines on Policies and Procedures in dealing with Unaccompanied Children Seeking Asylum*.<sup>79</sup> Settlement in child-friendly facilities, where they can find company and specialized assistance is of high importance for unaccompanied children, while priority shall always be given to siblings or other family relatives in compliance with the principle of family unity.<sup>80</sup> Additionally, IMO has encouraged the promotion of "community-based solutions that build on existing social structures."<sup>81</sup> Such statement enlightens the way public authorities shall approach accommodation issues.

Contrary to the above, detention of unaccompanied or separated children is not permitted.<sup>82</sup> Article 37 of the CRC, as a specific expression of the best interest principle, stipulates that "no child shall be deprived of his/her liberty,"<sup>83</sup> whereas detention shall be used only "as a measure

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child deprived of his or her family], due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.").

78. See G.A. Res. 69/157, Rights of the Child, ¶¶ 39–40 (2014) (affirming that the realization of children's rights requires taking an individual child's age and maturity into account).

79. See *Guidelines on Dealing with Unaccompanied Children Seeking Asylum*, *supra* note 35, ¶ 7.5 (stating that children seeking asylum should be under regular supervision and assessment by qualified persons, whether in foster homes or special centers, to ensure their well-being).

80. See *Guidelines on Dealing with Unaccompanied Children Seeking Asylum*, *supra* note 35, ¶¶ 7.3–7.4 (holding that, as far as possible, children "should be kept together in conformity with the principle of family unity").

81. See Int'l Org. for Migration, *International Migration Law Information Note on the Protection of Unaccompanied Migrant Children*, at 4 (Oct. 2016), [https://www.iom.int/sites/default/files/our\\_work/ICP/IML/IML-Information-Note-Protection-of-Unaccompanied-Migrant-Children.pdf](https://www.iom.int/sites/default/files/our_work/ICP/IML/IML-Information-Note-Protection-of-Unaccompanied-Migrant-Children.pdf) (emphasizing community-based solutions in order to best accommodate "the ethnic, religious, cultural and linguistic background of the children").

82. See CRC, *supra* note 10, art. 22 (stressing that unaccompanied children must be treated to the same protections as any other child deprived of his or her family environment).

83. CRC, *supra* note 10, art. 37.

of last resort.”<sup>84</sup> The same Article provides that the fact these children are unaccompanied does not constitute lawful ground for detention, thus rendering their possible arrest and detention arbitrary in nature.<sup>85</sup> The Working Group on Arbitrary Detention has clarified that automatic or mandatory deprivation of liberty are examples of arbitrary detention.<sup>86</sup> However, recent states’ practice depicts an unjustified inconsistency in the way detention is implemented with respect to unaccompanied and unseparated children.<sup>87</sup> The rise in numbers of children detained mainly by receiving states,<sup>88</sup> as well as the inhuman and degrading detention circumstances<sup>89</sup> have alerted the international community and the

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84. CRC, *supra* note 10, art. 37; *see also* ICCPR, *supra* note 71, at art. 9 (affirming that “[e]veryone has the right to liberty and security of person” and that “[n]o one shall be subjected to arbitrary arrest or detention,” among other such rights); *see also* Universal Declaration of Human Rights, G.A. Res. 217 A (III), art. 3 (Dec. 10, 1948) (establishing that “[e]veryone has the right to life, liberty and security of person.”).

85. *See* CRC, *supra* note 10, art. 37 (contextually implying that unaccompanied children may only be deprived of liberty for violations of the law other than being an unaccompanied child in the state in question).

86. *See* Comm. on the Rights of the Child, The Rights of All Children in the Context of International Migration, Day of General Discussion, at IV(f) (Aug. 2012), <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2012/2012DGDBackgroundPaper.pdf> (affirming that the Working Group on Arbitrary Detention regards mandatory or automatic detention as intrinsically arbitrary).

87. *See id.* IV(g) (noting that some states have in fact detained children in their supposed best interest, reasoning that “alternative measures of detention” are in effect the same as “alternatives to detention”).

88. *See* Hum. Rts. Watch, *Greece: Huge Rise in Detention of Migrant Children* (Aug. 2, 2017), <https://www.hrw.org/news/2017/08/02/greece-huge-rise-detention-migrant-children> (observing that Greece has placed unaccompanied migrant children in police cells and other detention centers with increasing frequency); *see also* Myrto Tilianaki, *Asylum-Seeking Kids Locked Up in Greece*, HUM. RTS. WATCH (Jan. 23, 2018), <https://www.hrw.org/news/2018/01/23/asylum-seeking-kids-locked-greece> (criticizing Greece for failing to fulfill its promise to place unaccompanied migrant children in special shelters rather than detention centers); *see also* Greece Immigration Detention Profile: January 2018, Global Detention Project (Jan. 2018), <https://reliefweb.int/sites/reliefweb.int/files/resources/GDP-Immigration-Detention-Report-Greece-2018.pdf> (noting that Greece has resorted to such immigration control measures due to other E.U. members, most notably Spain and Italy, entirely blocking immigration routes into their countries, making Greece the most important entry point to the E.U. for migrants and asylum seekers).

89. *See* Eur. Consult. Ass., *Refugees at risk in Greece*, Doc. No. 14082 Addendum (June 20, 2016), [https://www.ecoi.net/en/file/local/1100781/1226\\_1466498541\\_document-1.pdf](https://www.ecoi.net/en/file/local/1100781/1226_1466498541_document-1.pdf) (providing a firsthand account of the living conditions in “reception centres” in which unaccompanied children and migrants are detained in Greece); *see also* Helena Smith,

demand for review of this specific issue has opened a global dialogue.<sup>90</sup>

In the context of the ECHR, detention is regulated by Articles 3 and 5, respectively.<sup>91</sup> The ECtHR has addressed detention issues in a series of cases, trying to formulate through its jurisprudence a human-rights compatible approach for states. In *Mubilanzila Mayeka and Kanika Mitunga v. Belgium* case, an undocumented 5-years old unaccompanied minor, travelling from DRC to Canada, where her mother had obtained a refugee status, was held in detention by Belgian authorities and subsequently returned to DRC.<sup>92</sup> The applicants contested that the placement of the child in a adults' center, without any counselling or educational support constituted an insufficient protection amounting to inhuman and degrading treatment on behalf of Belgium.<sup>93</sup> The Court held that there was a clear violation of Article 3 of the ECHR and despite the lack of a special protective legal framework for unaccompanied minors, authorities had failed to take any adequate measures in favor of the child.<sup>94</sup>

Similarly, in the *Rahimi v. Greece* case, the ECtHR stressed that the detention conditions of an Afghan minor asylum-seeker, and namely the inadequate hygiene and the lack of infrastructures, severely undermined human dignity and constituted a violation of Article 3, pertaining to the prohibition of inhuman and degrading treatment.<sup>95</sup> Furthermore, in the

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*Conditions for Greece's Migrant Children Shocking, Says Human Rights Watch*, THE GUARDIAN (Sept. 8, 2016), <https://www.theguardian.com/world/2016/sep/09/conditions-for-greeces-migrant-children-shocking-says-human-rights-watch> (distilling a Human Rights Watch report to bring attention to the “deplorable and depraved conditions” migrant children detained in Greece endure).

90. See U.N. *Population Forum Urged to Examine Ways to Protect People on the Move, Make Cities Work Better*, U.N. NEWS (Apr. 9, 2018), <https://news.un.org/en/story/2018/04/1006881>. (discussing how the 51st Session of the U.N. Commission on Population and Development convened to “tackle a host of matters” pertaining to international migration and refugee settlement).

91. See CPHR, *supra* note 71, at arts. 3, 5 (establishing that “[n]o one shall be subjected . . . to inhuman or degrading treatment or punishment” and that “[e]veryone has the right to liberty,” so “[n]o one shall be deprived of his liberty save . . . in accordance with a procedure prescribed by law”).

92. *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium*, 2006-XI Eur. Ct. H.R. 267, 274–75, 278–79.

93. *Id.* at 285.

94. *Id.* at 290.

95. *Affaire Rahimi c. Grèce*, App. No. 8687/08, Eur. Ct. H.R. 1, 33–34, 36, 44 (2011), <http://hudoc.echr.coe.int/eng?i=001-104366> ; see also *Affaire Mohamad c.*

2016 *Abdullahi Elmi and Aweys Abubakar v. Malta* case, two Somalian minors had been excessively detained by Malta in overcrowded facilities, where fear and violence were dominant.<sup>96</sup> The Court, considering the specially vulnerable status of the applicants, found Malta responsible for violating the ECHR.<sup>97</sup> In the same preview, the IACtHR in its *Advisory Opinion OC-21/14*, by reference to the relevant European case-law, highlighted the obligation of states to guarantee basic conditions for places to accommodate child migrants—even for those travelling in an irregular migratory status—where they will provide medical care, legal assistance, educational opportunities and specialized attention to the children.<sup>98</sup>

Along with the establishment of a secure, child-friendly accommodation for this category of migrants, States are responsible for protecting and fulfilling a set of rights, the enjoyment of which shall be constant and independent from the granting of a specific status. Precisely, states shall ensure unaccompanied minors' full access to education, pursuant to CRC Articles 28, 29, 30 and 32.<sup>99</sup> All migrant minors are entitled to equal access to both formal and informal education, along with language development lessons.<sup>100</sup> Classes, leisure

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Grèce, App. No. 70586/11, Eur. Ct. H.R. 1, 12–13 (2014), <http://hudoc.echr.coe.int/eng?i=001-148635> (noting that the court had found Article 3 violations in a number of prior cases regarding the of detention of foreigners at the Greek border).

96. *Abdullahi Elmi and Aweys Abubakar v. Malta*, Apps. Nos. 25794/13 & 28151/13, Eur. Ct. H.R. 1, 2–3 (2016), <http://hudoc.echr.coe.int/eng?i=001-168780>.

97. *Id.* at 34.

98. Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, *Advisory Opinion OC-21/14*, Inter-Am. Ct. H.R. (ser. A) No. 21, ¶¶ 181–82 (Aug. 19, 2014).

99. CRC, *supra* note 10, arts. 28–30, 32; *see also* International Covenant on Economic, Social and Cultural Rights 3 (ICESCR), art. 13, Dec. 16, 1966, 993 U.N.T.S. 3 (asserting that State Parties recognize the right to education for everyone and stating the different amounts of access at various levels of education).

100. G.A. Res. 45/113, Havana Rules, ¶ 38 (Dec. 14, 1990); G.A. Res. 69/157, *supra* note 78, at ¶ 48(b)–(c), (n); *see also* Guide on Article 2 of Protocol No. 1 to the European Convention on Human Rights, ¶¶ 11–15, 17, Aug. 31, 2019, [https://www.echr.coe.int/Documents/Guide\\_Art\\_2\\_Protocol\\_1\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_2_Protocol_1_ENG.pdf) (affirming the right to existing educational institutions and using case law to flesh out the scope of the right to education); Directive 2013/33/EU, of the European Parliament and of the Council of 26 June 2013 Laying Down Standards for the Reception of Applicants for International Protection, 2001 O.J. (L 180) 96, 104.

and recreational activities shall take place with the assistance trained personnel, that will respect the cultural background of children and be aware of their needs.<sup>101</sup> Unfortunately, very few facilities employ employees that receive specific training on child protection, whereas the lack of regulatory framework on this issue impedes its implementation.<sup>102</sup>

In addition to the access to education, the right to the highest attainable standard of health and access to health facilities must be of primary concern for states.<sup>103</sup> Unaccompanied minors shall enjoy the exact same access with that of children who are national.<sup>104</sup> Considering the mental trauma or physical abuse that these children have endured, due to family deprivation, child healthcare provided shall be effective and specially designed for unaccompanied children.<sup>105</sup> The adoption of comprehensive measures for ensuring the physical and mental health care of minors in an age- and gender-sensitive manner has been reiterated by the IACtHR,<sup>106</sup> which has emphasized the interrelation of said right with the right to life and human dignity.<sup>107</sup> In the same view, lack of hygiene conditions in detention center in Greece constituted solid ground for the ECtHR to find violation of the prohibition of inhuman

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101. See Directive 2013/33/EU, *supra* note 100, at 103–04.

102. See E.U. Agency for Fundamental Rights [FRA], *European Legal and Policy Framework on Immigration Detention of Children*, at 78–80 (2017) [hereinafter *Detention of Children Framework*], [https://fra.europa.eu/sites/default/files/fra\\_uploads/fra-2017-immigration-detention-children\\_en.pdf](https://fra.europa.eu/sites/default/files/fra_uploads/fra-2017-immigration-detention-children_en.pdf) (discussing the deficiencies of detention facilities maintained by guards, particularly because only four EU Member States report regular training on child protection).

103. CRC, *supra* note 10, arts. 24(1); G.A. Res. 69/157, *supra* note 78, at ¶ 47(m); Cf. Comm. for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment [CPT], *Immigration Detention: Factsheet*, CPT/Inf(2017)3, at 8–9 (March 2017) (articulating the medical care requirements within a detention facility under the Council of Europe); Directive 2008/115/EC, of the European Parliament and of the Council of 16 December 2008 on Common Standards and Procedures in Member States for Returning Illegally Staying Third-Country Nationals, 2008 O.J. (L 348) 98, 104–05.

104. G.A. Res. 69/157, *supra* note 78, ¶ 24.

105. *Id.* ¶ 23; see generally Sabi Ardalan & Palmer Lawrence, *The Importance of Nonphysical Harm: Psychological Harm and Violations of Economic, Social, and Cultural Rights in U.S. Asylum Law*, 14-09 IMMIGR. BRIEFINGS 1, 4, 7 (2014) (underscoring the types of trauma suffered by those seeking asylum which require specialized care).

106. *Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection*, *supra* note 98, ¶ 104.

107. *Vera Vera v. Ecuador*, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 226, ¶ 43 (May 19, 2011).

and degrading treatment in the *A.A. v. Greece* case.<sup>108</sup>

However, reality in many receiving states—which appear unable to provide high standards of care and accommodation conditions due to socioeconomic reasons—constitutes an obstacle to the effective protection of said rights of migrant children.<sup>109</sup> The contribution of NGOs, institutions and stakeholders in cases where governmental capacity is limited can be definitive in promoting inter-disciplinary cooperation within countries.<sup>110</sup> Especially, in host states where a great number of migrant and refugee children arrive on a regular basis, the overcrowded reception centers (the renowned hotspots in the islands of Greece, for example)<sup>111</sup>, the lack of infrastructure and child-oriented procedures prove the necessity to review the current migration system on the basis of the above standards and principles.

### C. GUARDIANSHIP

The next prerequisite for the structure of a “life project” for unaccompanied minors is the establishment and operation of an effective guardianship system.<sup>112</sup> In the terms of migration, guardianship consists

108. *A.A. c. Grèce*, App. No. 12186/08, Eur. Ct. H.R. 1, 18, <http://hudoc.echr.coe.int/eng?i=001-100014>.

109. See UNHCR Urges Greece to Address Overcrowded Reception Centres on Aegean Islands, UNHCR (Aug. 31, 2018), <https://www.unhcr.org/news/briefing/2018/8/5b88f5c34/unhcr-urges-greece-address-overcrowded-reception-centres-aegean-islands.html> (summarizing the UNHCR spokesperson’s comments pressuring Greece to address overcrowding and the deteriorating conditions of their detention centers).

110. Cf. Wenke & Heiberg, *supra* note 74, at 26 (addressing the various competencies of different agencies and professions in assisting in transnational child protection cases and stressing the of creating partnerships to more effectively work with children).

111. See Clément Nicolas, *Hell on Earth: The Moria Refugee Camp on the Greek Island of Lesbos*, EURACTIV (Jan. 11, 2019), <https://www.euractiv.com/section/future-eu/news/moria-refugee-camp-on-greek-island-of-lesbos-hell-on-earth/?fbclid=IwAR2OZNRkYMBntzbAnKPtaJO70zjwfqVGSihC20V1h0ydfmdZyruMmgz8Q> (describing the overcrowding conditions of the Moria refugee camp ‘hotspot’ in Greece).

112. See CRC, *supra* note 10, arts. 18(2), 20(1) (requiring State Parties to render assistance to parents and guardians in raising children and entitling children without family special protection); see also EUR. CONSULT. ASS., *Harmonising the Protection of Unaccompanied Minors in Europe*, Doc. No. 14142, ¶¶ 1.2(3)-(5), 3(22) (2016), <http://semantic-pace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnNveG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0yMzAxNyZsYW5nPUV>

of the representation of the unaccompanied minor in decision making processes with the aim to safeguard respect and fulfillment of the his/her rights.<sup>113</sup> In practice, guardianship takes different institutional and practical forms from state to state.<sup>114</sup> It is this interrelation of guardianship with national welfare systems regularly that leads to the lack of adequate and coherent guardianship systems.<sup>115</sup> In Greece, for example, police officers usually undertake duties of guardians of unprotected minors due to inadequacies of the currently operating

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O&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XR C1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTIzMDE3 (describing the Parliamentary Assembly's history emphasizing concerns for unaccompanied migrant children including guardianship and assistance to define a life project for each child); EUR. CONSULT. ASS., *Unaccompanied Children in Europe: Issues of arrival, stay and return*, Resolution 1810, ¶ 5.15 (2011), <http://semanticpace.net/tools/pdf.aspx?doc=aHR0cDovL2Fzc2VtYmx5LmNvZS5pbmQvbnceG1sL1hSZWYvWDJlURXLWV4dHIuYXNwP2ZpbGVpZD0xNzk5MSZsYW5nPUV O&xsl=aHR0cDovL3NlbWFudGljcGFjZS5uZXQvWHNsdC9QZGYvWFJlZi1XR C1BVC1YTUwyUERGLnhzbA==&xsltparams=ZmlsZWlkPTE3OTkx> (asserting the rights of a child to a guardian during return proceedings); see generally Louise Drammeh, Council of Europe, *Life Projects for Unaccompanied Migrant Minors: A Handbook for Front-Line Professionals*, at 7 (2010), <https://edoc.coe.int/en/migration/7788-life-projects-for-unaccompanied-migrant-minors.html> (describing the purpose and structure of life projects).

113. See UNHCR, Guidelines on Int'l Protection: Child Asylum Claims under Articles 1(A)2 and 1(F) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees, at 26 n.135, U.N. Doc. HCR/GIP/09/08 (Dec. 22, 2009) (defining guardian as it applies to the guidelines); see also *Comment No. 6*, *supra* note 30, ¶ 33 (asserting that a guardian is the link between child and specialists in performing his or her duties to safeguard child's interests).

114. See Daniel Hedlund & Lisa Salmonsson, *Challenges in the Guardianship of Unaccompanied Minors Seeking Asylum*, 26 INT'L J. CHILD. RTS. 489, 491 (2018) (differentiating a guardian from public counsel in that the responsibilities go beyond advocating for protection and therefore varies depending on jurisdiction); see also Wenke & Heiberg, *supra* note 74, at 49 (describing some ways guardianship models differ country by country).

115. See Hedlund & Salmonsson, *supra* note 114, at 489, 492–93 (exploring the paradigms of welfare systems that may have implications on shaping guardianship systems); see generally GOSTA EPSING-ANDERSON, *THE THREE WORLDS OF WELFARE CAPITALISM 223–24* (Princeton Univ. Press, 1990) (describing generally the reliance of guardians on government services and comparing the Swedish and German systems of welfare relating to women with children's ability to work); Diane Sainsbury, *Immigrants' Social Rights in Comparative Perspective: Welfare Regimes, Forms of Immigration and Immigration Policy Regimes*, 16 J. EUR. SOC. POL'Y 229, 239–40 (differentiating the welfare systems of the United States with Germany).

guardianship system.<sup>116</sup> This leads to the paradox in which authorities primarily responsible for law enforcement bear responsibilities for child migrants' protection at the same time.<sup>117</sup>

In USA, the rise in the numbers of children arriving alone at borders, either fleeing the violence in their home countries or being sent by their own families,<sup>118</sup> has created many considerations on guardianship issues.<sup>119</sup> Insufficient representation along with the complexity of the US guardianship system, where multiple authorities are involved,<sup>120</sup> prove that guardianship has become a real challenge.<sup>121</sup> To address the issue, however, requires the understanding of the institution's value for the children. As it is evident from the examples of Greece and USA, unaccompanied minors have to face complex immigration laws as well as state practices that in most cases impose children's detention.<sup>122</sup> The appointment of a guardian is key to their protection, since this is the only person that can guarantee that child's voice is heard in the various immigration procedures.<sup>123</sup>

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116. See Victoria Galante, *Greece's Not-so-Warm Welcome to Unaccompanied Minors: Reforming E.U. Law to Prevent the Illegal Treatment of Migrant Children in Greece*, 39 BROOK. J. INT'L L. 745, 772–74 (2014) (describing the dual role of policemen and public prosecutors in adjudicating asylum and immigration cases involving unaccompanied minors).

117. See Hum. Rts. Watch, *Left to Survive: Systematic Failure to Protect Unaccompanied Migrant Children in Greece*, at 2 (2008) (noting abuses by police officers and coast guards while assuming almost all responsibilities over the child).

118. See IOM, *World Migration Report 2018*, *supra* note 4, at 344, 346–47 (exploring reasons why children flee to countries unaccompanied such as strategic decision making by the family or exigent circumstances like conflict or persecution).

119. See Hedlund & Salmonsson, *supra* note 114, at 497 (dissecting the literature on complexity of US immigration system that considers the best interests of the child against U.S. immigration law and ideological concerns).

120. See Shani M. King, *Alone and Unrepresented: A Call to Congress to Provide Counsel for Unaccompanied Minors*, 50 HARV. J. LEGIS. 331, 332–34 (2013) (breaking down the benefits of legal representation for migrant minors in the US and the inadequacy of the system that does not allow free representation for unaccompanied minors).

121. See Hedlund & Salmonsson, *supra* note 114, at 495–96 (conducting literature review to show lacking guardianship systems in asylum destinations).

122. See Galante, *supra* note 116, at 772 (exploring the difficulties of funding, staff, and the overlapping roles of police and prosecutors in child asylum cases); see also King, *supra* note 120, at 334–35 (explaining the procedural complexities of the United States' system of detention for minors and the difficulties for unaccompanied minors to make it past border patrol in the legal process).

123. See Wenke & Heiberg, *supra* note 74, at 49–50 (exploring the role if a guardian to assess the child's best interest through the legal process and support the child

In particular, the role of the guardian is detrimental in ensuring and promoting the best interests of the child from the time of the arrival at the state and his/her identification until the child reaches the age of majority or leaves the territory of the state.<sup>124</sup> Being thus responsible for assessing the child's best interest and for evaluating any decisions made for him/her, the guardian shall possess the knowledge and skills required to identify each time the best option for the child and act in conformity with his/her mental, physical and material needs.<sup>125</sup> The Committee on the Rights of the Child has specifically outlined the obligation of states to ensure the guardians' "special expertise" on childcare issues<sup>126</sup> offering special training programs to this end.<sup>127</sup>

Special qualification of guardians is further supplemented by the general demand of "continuity" of guardianship,<sup>128</sup> especially in the context of return and relocation procedures. The continuous guardianship and representation of unaccompanied children constitutes a critical aspect of the overall obligation of states to ensure non-disruption of the child's care arrangements throughout the entire

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throughout).

124. See United Nations Children's Fund [UNICEF], *A Call for Effective Guardianship for Unaccompanied and Separated Children*, at 1 (Aug. 2016), [https://www.unicef.org/eca/sites/unicef.org/eca/files/REFUGEE\\_MIGRANT\\_CRISIS\\_ADVOCACY\\_guardianship\\_08\\_08\\_16.pdf](https://www.unicef.org/eca/sites/unicef.org/eca/files/REFUGEE_MIGRANT_CRISIS_ADVOCACY_guardianship_08_08_16.pdf) (discussing a guardian's involvement in the process of the child's migration status and any long-term solution).

125. See E.U. Agency for Fundamental Rights [FRA], *Guardianship for Children Deprived of Parental Care: A Handbook to Reinforce Guardianship Systems to Cater for the Specific Needs of Child Victims of Trafficking*, at 27 (2014) [hereinafter *Guardianship for Children Deprived of Parental Care*], [https://fra.europa.eu/sites/default/files/fra-2014-guardianship-children\\_en\\_0.pdf](https://fra.europa.eu/sites/default/files/fra-2014-guardianship-children_en_0.pdf) (requiring appointed guardians to be independent, professionally qualified, and receive training for each particular child's needs).

126. See *Comment No. 6*, *supra* note 30, ¶ 33 (requiring guardians and all officials working with unaccompanied migrant children to have specialized training for their particular role and containing common elements such as cultural sensitivity, interview techniques and knowledge of origin country).

127. See *Guardianship for Children Deprived of Parental Care*, *supra* note 125, at 46–50 (specifying types of trainings provided such as induction and refresher training, as well as the minimum topics that must be covered during training programs). *But see Harmonising the Protection of Unaccompanied Minors in Europe*, *supra* note 112, at 11 (noting that some States have no guardianship system or training program which often leads to unaccompanied migrant children's treatment as adults).

128. See, e.g., Directive 2013/33/EU, *supra* note 100, at 107 (mandating that under EU law, a child's guardian shall be changed only as necessary).

process.<sup>129</sup> Specifically, the transfer or return—voluntary<sup>130</sup> or not—of the child to a third country shall be conducted in combination with the ‘hand-over’ of the care and the transnational cooperation of guardians.<sup>131</sup> Guardians both of host countries and of countries of origin are responsible for coordinating said procedures in view of the child’s best interest, while they shall be able to communicate with the child on a trusted and friendly way.<sup>132</sup> The establishment of a cross-border guardianship system that includes constantly available information for the child’s representation appears as an imperative in modern years.<sup>133</sup>

#### D. LEGAL REPRESENTATION AND ACCESS TO ASYLUM PROCEDURES

In the meantime, support and communication of the child with states’ authorities or third parties requires the appointment of a legal representative, a person with specialized knowledge and skills in legal representation.<sup>134</sup> IACtHR has affirmed the unaccompanied minors’ right to defend themselves and be awarded with proper remedies, in case of infringements of their rights.<sup>135</sup> In the *Vélez Loor v. Panama* case, the Court outlined the right of a foreigner being in vulnerable situation to be able to defend his rights against punitive administrative proceedings with

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129. See *id.* (recognizing that limited turnover in guardianship over a child is in the child’s best interests).

130. See also European Council on Refugees and Exiles & Save the Children, *Comparative Study on Practices in the Field of Return of Minors*, 18–20, HOME/2009/RFX/PR/1002 (2011) (providing guidelines for “an effective removal and repatriation system” while taking into account the child’s best interests and international human rights obligations).

131. See Ana Fonseca et al., Int’l Org. For Migration [IOM], *Unaccompanied Migrant Children and Legal Guardianship in the Context of Returns: The Missing Links Between Host Countries and Countries of Origin*, in *Children on the Move*, at 45, 47, 53 (2013), [https://publications.iom.int/system/files/pdf/children\\_on\\_the\\_move\\_15may.pdf](https://publications.iom.int/system/files/pdf/children_on_the_move_15may.pdf) (emphasizing that in the European context, cooperation between a child’s assigned legal guardians and designated legal guardians in the child’s country of origin is important for protection of the child’s well-being).

132. See Wenke & Heiberg, *supra* note 74, at 50 (citing the 1996 Hague Convention on Child Protection’s “framework for cooperation between the authorities of Contracting States as may be necessary to achieve the purposes of the Convention”).

133. See *Communication From the Commission to the European Parliament and the Council: The Protection of Children in Migration*, at 9–11, COM (2017) 211 final (Dec. 4, 2017) (discussing the establishment of a European Network on Guardianship Institutions).

134. *Comment No. 6*, *supra* note 30, ¶ 33.

135. Rights and Guarantees of Children in the context of Migration and/or in Need of International Protection, *supra* note 98, ¶¶ 204–05.

the appropriate legal aid.<sup>136</sup>

Considering the impact asylum procedures and decisions have in children's lives, UNHCR encourages states to provide for properly trained legal assistance of unaccompanied minors, that will uphold support of their best interests throughout the entire procedure.<sup>137</sup> However, as the Human Rights Committee pinpointed during examination of states' reports, legal assistance needs to be further regulated and reinforced in many countries.<sup>138</sup> In its 2009 concluding observations for Spain, for example, the Committee referred to the lack of access to legal representation in cases of forced or involuntary repatriations of unaccompanied children.<sup>139</sup>

In the UK there is not a consolidated guardianship system for unaccompanied minors. Instead, the child is entitled to several contact persons, who support him/her in specific issues.<sup>140</sup> Among these persons there is a solicitor, a "responsible adult," an adviser of the British Refugee Council children's panel, a social worker, etc.<sup>141</sup> This fragmented protection—considering also that none of these persons is fully responsible for the child's protection—has been criticized by UNHCR,<sup>142</sup> since the demand for an 'independent adult to represent and advocate'

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136. *Vélez Lóor v. Panama*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C), ¶ 132 (Nov. 23, 2010); *accord*, Gisela De León, *Contributions and Challenges for the Inter American Court of Human Rights for the Protection of Migrants' Rights: The Case of Vélez Lóor v. Panama*, 7 INTER-AM. & EUR. HUM. RTS. J. 39, 45–46 (2014) ("The Court established that states have the obligation to adopt special measures for the protection of migrants.").

137. *Comment No. 6*, *supra* note 30, ¶¶ 33, 35.

138. *See* Consideration of Reports Submitted by States Parties Under Article 40 of the Covenant, Concluding Observations of the Human Rights Committee: Spain on Its Ninety-Fourth Session, ¶ 21, U.N. Doc. CCPR/C/ESP/Co/5 (2009) (expressing the Committee's concern at the lack of attention paid to the best interests of repatriated children, particularly where no legal assistance is provided).

139. *Id.* at ¶ 21.

140. *See* France Terre D'Asile, *Right to Asylum for Unaccompanied Minors in the European Union*, at 16 (2012), <http://www.france-terre-asile.org/iamges/stories/mineurs-isoles-etrangers/mi-an-consolide-web.pdf> (noting that the lack of consolidated guardianship is always true, whether or not the child is seeking asylum).

141. *See id.* at 16 (noting that while there is not one adult solely responsible for the child's welfare, there is a network of people involved).

142. *See* Consideration of Reports Submitted by States Parties Under Article 44 of the Convention, Concluding Observations: United Kingdom of Great Britain and Northern Ireland on Its Forty-Ninth Session, ¶ 71(c), U.N. Doc. CRC/C/GBR/CO/4

the child's best interests still exists.<sup>143</sup> Accordingly, the ECtHR in the remarkable case of *MSS v. Belgium and Greece* made a specific reference to the lack of effective legal aid within Greece's asylum system, depriving thus asylum seekers of legal counsels.<sup>144</sup> However, said deficiency did not constitute an autonomous ground for the Court to find violation of Article 13 ECHR, as such applies in migration cases.<sup>145</sup>

However, ensuring legal representation of migrant children constitutes part of states' main obligation to establish a "functioning asylum system."<sup>146</sup> Children shall be able to "access" asylum procedures and complementary forms of protection, without being discriminated on grounds of age.<sup>147</sup> Article 22 of the CRC, whose complementary nature to refugee law is established, intends to safeguard the minimum procedural standards.<sup>148</sup> UNHCR, through its authoritative interpretation of the CRC, has developed a pyramidal asylum system of unaccompanied

(2008) (recommending that the State party appoint a legal guardian for unaccompanied minors).

143. See *D'Asile*, *supra* note 140, at 31–32 (citing the UN recommendation to the UK that a unitary guardian be appointed to oversee the child's interests in conjunction with similar recommendations from stakeholders).

144. *M.S.S. v. Belgium & Greece*, 2011-I Eur. Ct. H.R. 255, 326.

145. See European Convention for the Protection of Human Rights and Fundamental Freedoms, art. 13, Sept. 21, 1970, 213 U.N.T.S. 222 [hereinafter European Convention on Human Rights] ("Everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity."); *Maaouia v. France*, 2000-X Eur. Ct. H.R. 301, 314 (explaining that art. 6 of the European Convention on Human Rights, regarding the right to a fair trial, does not apply to "decisions regarding the entry, stay and deportation of aliens do not concern the determination of an applicant's civil rights or obligations against him."); *G.R. v. The Netherlands*, App. No. 22251/07, Eur. Ct. H.R. 1, 9 (2012), <http://hudoc.echr.coe.int/eng?i=001-108436> ("Article 6 is not applicable to proceedings concerning the legality of an alien's residence, which pertain exclusively to public law.").

146. *Comment No. 6*, *supra* note 30, ¶¶ 64, 69.

147. See CRC, *supra* note 10, art. 2 (mandating that States Parties "ensure the rights set forth" in the convention "without discrimination of any kind."); see *Comment No. 6*, *supra* note 30, ¶ 66 (mandating that children seeking asylum "shall enjoy access to asylum procedures and other complementary mechanisms providing international protection, irrespective of their age.").

148. See CRC, *supra* note 10, art. 22 (mandating that "appropriate measures" are taken to ensure asylum-seeking children "receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights," explicitly drawing from international human rights law as a source for those rights).

minors being outside their countries of origin.<sup>149</sup>

Initiating from the right of children to refugee status under the 1951 Refugee Convention, UNHCR endorses the implementation of the Convention's provisions in conjunction with the CRC.<sup>150</sup> Asylum claims shall be examined based on the fear of "persecution," as such is experienced by the child and not an adult and considering the particular motives and threats for each child.<sup>151</sup> In case that a child is not entitled to the refugee status, states should provide for alternatives forms of protection, where children enjoy full protection of their fundamental right. In the absence of alternatives, migrant children are protected under the CRC, since they remain within the state's jurisdiction.<sup>152</sup>

A useful, compatible tool when examining issues of effective access to asylum is the right to fair trial.<sup>153</sup> Article 6 of the American Convention, for example, entails due process guarantees that also correspond to migration proceedings.<sup>154</sup> IACtHR has particularly emphasized the differentiated nature of states' obligations when processing asylum claims of migrant children, owing to the vulnerable status and special needs of the asylum seekers.<sup>155</sup> The child's right to be notified through a

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149. *See Comment No. 6, supra* note 30, ¶¶ 64–66 (explaining States must account for ever-evolving international standards of refugee law when acting under art. 22 of the Convention).

150. *Id.* at ¶¶ 76, 78.

151. *Id.* at ¶ 74.

152. *See id.* at ¶¶ 77–78 (providing protection under the Convention "as long as" the child remains within the States jurisdiction).

153. *See ICCPR, supra* note 71, art. 14 (accordng everyone the right to a fair trial by an "impartial tribunal"); ACHR, *supra* note 71, art. 8 (accordng everyone the right to a fair trial "within a reasonable time" by a an "impartial tribunal" in both civil and criminal cases); European Convention on Human Rights, *supra* note 145, art. 6 (accordng everyone the right to "a fair and public hearing within a reasonable time by an independent and impartial tribunal" in both civil and criminal matters).

154. *See also* ACHR, *supra* note 71, art. 8 (accordng every person the due process right to a fair trial held "within a reasonable time" by an "impartial tribunal" in both civil and criminal matters); *see also* ACHR, *supra* note 71, at art. 19 ("Every minor child has the right to the measures of protection required by his condition as a minor on the part of his family, society, and the state."); *Mendoza v. Argentina*, Preliminary Objections, Merits, and Reparations, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 260, ¶ 148 (May 14, 2013) ("The guarantees recognized in Articles 8 and 25 of the Convention are recognized to all persons equally, and must also correspond to the specific rights established in Article 19 so that they are reflected in any administrative or judicial proceedings in which any right of a child is debated.").

155. *See* Rights and Guarantees of Children in the Context of Migration and/or in

trusted and understandable way of the available proceedings as well as of the decisions issued during such proceedings<sup>156</sup> shall be properly secured.

In addition, prioritization of the assessment of asylum applications or other claims of unaccompanied children and prompt issuance of the final decisions falls within the guarantee of “reasonable time of the duration” of the process.<sup>157</sup> Examples of this practice can be found on the 2017 Organic Act on Human Mobility of Ecuador, whose Article 113 stipulates that “[p]riority shall be given to the processing of applications submitted by unaccompanied children and adolescents,”<sup>158</sup> while an enumeration of due process guarantees are articulated in the 2014 General Law on the Rights of Children and Adolescents of Mexico.<sup>159</sup>

Despite the recognition of numerous other procedural safeguards—including but not limited to the reasonable justification of decisions and the right to effective remedies—the question remains. Statistics show

Need of International Protection, *supra* note 98, ¶ 114 (explaining that differentiated proceedings are necessary for children because “they do not participate in migratory proceedings” in the same way that an adult can); *see* Juridical Condition and Human Rights of the Child, Advisory Opinion OC-17/2202, Inter-Am. Ct. H.R. (ser. A) No.17, ¶ 96 (Aug. 28, 2002) (noting that a lack of “special measures for the protection of children” would be “to their grave detriment” because children do not participate in proceedings in the same way as adults can).

156. *See* Comm. on the Rights of the Child, *General Comment No. 12: The Right for the Child to be Heard*, ¶¶ 40–47, 82, CRC/C/GC/12 (July 1, 2009) (providing a five-step guideline for how to properly secure the child’s right to be heard during proceedings).

157. *See* V.A.M. v. Serbia, App. No. 39177/05, Eur. Ct. H.R. 1, 17, 18 (2007), <http://hudoc.echr.coe.int/eng?i=001-79769> (noting “the right to respect for family life” timeliness is of special consideration in legal proceedings); *see* Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, *supra* note 98, ¶ 143 (emphasizing the importance in observing a “reasonable time” for the handling of legal proceedings involving children).

158. *See* Ley orgánica de movilidad humana, art 113(4), 31 de ene. 2017, Presidencia de la República del Ecuador (“Se dará prioridad a la tramitación de las solicitudes presentadas por niñas, niños y adolescentes no acompañados o separados de su representante legal, víctimas de tortura, víctimas de abuso sexual o violencia por motivos de género.” [“Priority will be given to the processing of applications submitted by children and adolescents who are unaccompanied or separated from their legal representative, victims of torture, victims of sexual abuse or gender-based violence.”]).

159. *See* Ley de Migración [LM] art 92, Diario Oficial de la Federación [DOF] 05-25-2011, última reforma 07-06-13 (Mex.) (outlining a verification process of a foreigner’s eligibility to remain in the territory); *see* United Nations Children’s Fund [UNICEF], *The Rights of Children and Adolescents in Mexico: A Present Day Agenda*, at 69 (Apr. 2010) (noting that the Mexican Constitution recognizes the obligations of the Convention on the Rights of the Child).

that in 2017 31,400 unaccompanied minors sought asylum in Europe,<sup>160</sup> while for the period between 2015 and 2016 100,000 unaccompanied minors were apprehended at the border between Mexico and the United States.<sup>161</sup> These numbers along with the systematic deficiencies in various asylum systems, where unjustified delays in registration,<sup>162</sup> arbitrary arrests<sup>163</sup> and unlawful denials of asylum<sup>164</sup> have been recorded, prove that the implementation of the procedural safeguards analyzed above is an imperative.

#### E. FAMILY REUNIFICATION

The last but core right of the protection of unaccompanied minors examined for the purposes of the present study is the right to family reunification;<sup>165</sup> in fact, the latter comprises the “ultimate aim,”<sup>166</sup> that conceptualizes the entire effort towards the establishment of a functional protection system for unaccompanied and separated minors in the context of international migration.<sup>167</sup> As Articles 9, 10, 20 and 22 of the CRC enshrine, every child is entitled to family life and all efforts of states shall be focused on the tracing of the parents or other family members of the child, should his/her best interests do not indicate otherwise.<sup>168</sup>

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160. *Over 31,000 Unaccompanied Minors Among Asylum Seekers Registered in the E.U. in 2017*, EUROSTAT (May 16, 2017), <https://ec.europa.eu/eurostat/documents/2995521/8895109/3-16052018-BP-EN.pdf/ec4cc3d7-c177-4944-964f-d85401e55ad9>.

161. United Nations Children’s Fund [UNICEF], *A Child is a Child: Protecting Children on the Move from Violence, Abuse, and Exploitation*, at 11 (May 2007) [hereinafter *A Child is a Child*].

162. See Asylum Information Database [AIDA], *Asylum Systems in 2017: Overview of Developments from Selected European Countries*, at 7 (Mar. 2018) (demonstrating unjustified delays in registration in Spain, with the average waiting time of 6 months).

163. *Id.* at 9 (discussing a pattern of arbitrary arrest at the Greek-Turkish land border that has been systematically reported).

164. *Id.* at 13 (discussing asylum procedure in Italy where people are barred asylum based on their nationalities and denied access without a registered domicile contrary to the law).

165. See *Comment No. 6*, *supra* note 30, ¶ 79 (stating that the possibility of family reunification is the starting point of searching for a durable solution for unaccompanied children).

166. *Id.*

167. See *Dialogue Across the Atlantic*, *supra* note 70, at 433–35 (deciding States have an obligation to employ necessary measures to protect unaccompanied or separated children, particularly those in an irregular migratory situation).

168. *Id.* at 455.

Despite its paramount significance, family reunification as a right and institution is not properly safeguarded against the challenges modern migration and states' policies pose.<sup>169</sup>

In US borders the increase in phenomena of family separations following implementation of the “zero-tolerance” policy on May 2018 has raised great concerns on how family-related rights are guaranteed.<sup>170</sup> In addition, over 8 percent of the Guatemalan and Honduran children in US interviewed by UNHCR during the “Children on the Run” project shared their hopes for family reunification.<sup>171</sup> In the Mediterranean region, at the same time, family reunification requests have unprecedentedly increased, while their processing still encounters unjustifiable delays or/and rejections.<sup>172</sup> Taking these into account, the creation of a structure able to accommodate the needs of the child and promote family unity appears to be a complex yet significant task.

In the EU, the 2013 *Reception Conditions Directive* provides for the obligation of states to take appropriate actions to identify the family members as long as an application of international protection is lodged.<sup>173</sup> Moreover, the EU *Action Plan on Unaccompanied Minors* provides that during assessment of the child's best interests, states shall perform proper tracing activities.<sup>174</sup> Only if such activities are completed, states should decide whether the return to the state of origin or the transfer to

169. See European Network of Ombudsmen for Children [ENOC], *Safety and Fundamental Rights at Stake for Children on the Move*, at 2 (2016) (emphasizing the potential conflict between child's interest of family reunification and states' restrictive policies against family reunification).

170. See Brian Beruman & Alisa Barba, *5 Facts to Know About Migrant Family Reunification*, NPR (July 19, 2018), <https://www.npr.org/2018/07/19/630463522/5-things-to-know-about-migrant-family-reunification> (last visited Oct. 13, 2019) (noticing a dramatic increase in the number of family separations after the zero-tolerance policy).

171. Children on the Run, *supra* note 23, at 10.

172. See European Council on Refugees and Exiles [ECRE] & Red Cross E.U. Office, *Disrupted Flight: The Realities of Separated Refugee Families in the E.U.*, at 12, <https://www.refworld.org/docid/58514a054.html>.

173. See Directive 2013/33/EU, *supra* note 100, at 108 (“Member States shall start tracing the members of the unaccompanied minor's family, where necessary with the assistance of international or other relevant organisations, as soon as possible after an application for international protection is made, whilst protecting his or her best interests”).

174. *Communication from the Commission to the European Parliament and the Council: Action Plan on Unaccompanied Minors (2010–2014)*, at 11, COM (2012) 213 final (May 6, 2010) [hereinafter *Action Plan on Unaccompanied Minors*].

a third country is compatible with the child's best interest or not. The ECtHR had to deal with such conduct in the *Mubilanžila Mayeka and Kaniki Mitunga v. Belgium* case.<sup>175</sup> The Court in Strasbourg found that the Belgian authorities had not only unlawfully returned a five-years old Congolese national back to DRC, but also, had impeded her reunification with her mother in Canada, since they had not conducted the appropriate inquiries beforehand.<sup>176</sup> Hence, Belgium was found responsible for violating Article 8 of the ECHR on the right to private and family life.<sup>177</sup>

In many instances, though, the right to family reunification is subject to restrictions on grounds of the state's conflicting interest to enforce its national migration plans on deportation or expulsion.<sup>178</sup> It is true that even CRC provides for the possibility of family separation resulting from deportation of one or both parents.<sup>179</sup> But, even in such cases, states' power to impose their own policies cannot be exercised arbitrarily to the detriment of the right concerned. As has been enshrined in relevant jurisprudence, restrictions on human rights and in this case, of the right to family reunification shall be founded on specific grounds; namely, it shall be predicted by law<sup>180</sup> and be necessary to a democratic society.<sup>181</sup>

A fair balance of the competing interests<sup>182</sup> shall be achieved through

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175. *Mubilanžila Mayeka and Kaniki Mitunga v. Belgium*, 2006-XI Eur. Ct. H.R. 267, 294–95.

176. *Id.* at 293–94.

177. *Id.* at 299 (finding Belgium had an obligation to facilitate the unaccompanied child's reunification with the family).

178. *See* Rights and Guarantees of Children in the Context of Migration and/or in Need of International Protection, *supra* note 98, ¶ 274 (recognizing states' own immigration policies could supersede a child's right to family life); *see generally* Daniel Thym, *Respect for Private and Family Life Under Article 8 ECHR in Immigration Cases: A Human Right to Regularize Illegal Stay?*, 57 INT'L COMP. L. Q. 87, 99 (2008).

179. G.A. Res. 44/25, art. 9(4) (Sept. 20, 1990).

180. *See* *Casteñada Gutman v. México*, Preliminary Objections, Merits, Reparations, and Costs, Judgement, Inter-Am. Ct. H.R. (ser. C) No. 184, ¶ 176 (Aug. 6, 2008).

181. *Id.* at ¶ 185; *see also* *Handyside v. United Kingdom*, App. No. 5493/72, Eur. Ct. H.R. 1, 17 (1976), <http://hudoc.echr.coe.int/eng?i=001-57499>; STEVEN GREER, *THE EXCEPTIONS TO ARTICLES 8 TO 11 OF THE EUROPEAN CONVENTION IN HUMAN RIGHTS 14* (Council of Europe Publishing, 1997) (discussing the democratic necessity test that looks to the genuine interest of democracy and ensures the interference is not a political measure).

182. *See* *Jeunesse v. the Netherlands*, App. No. 12738/10, Eur. Ct. H.R. 1, 34 (2014), <http://hudoc.echr.coe.int/eng?i=001-147117> (considering a fair balance between the private interest of holding a family life and the public interest of national immigration

respect to the undertaken obligations under the CRC. Family tracing and reunification being the components of a durable solution for unaccompanied minors<sup>183</sup> should be assessed upon arrival and continue during the entire asylum procedure.<sup>184</sup> Assessment is always to be conducted based on the child's best interest, that will determine whether reunification shall be effected and if so, whether it should take place in the country of origin or in the host state (including third countries), depending on which option upholds the child's best interest.<sup>185</sup> The existence of a "reasonable risk" in the country of origin can justifiably prevent the child's return and reunification with the rest family.<sup>186</sup> Thus, when a host state grants international protection to a child, family reunification in the country of origin is automatically excluded.<sup>187</sup>

In recent law and jurisprudence, endeavors to "loosen up migration restrictions" in favor of family unity are evident.<sup>188</sup> In the EU, the *Family Reunification Directive* requires states to permit the entry and residence of the parents of unaccompanied refugees or—in case that they cannot be traced—the entry of the legal guardian or other family member.<sup>189</sup> Additionally, in the context of transfers conducted within the common European asylum system, Dublin III Regulation provides that in case of

policy).

183. See *Comment No. 6*, *supra* note 30, ¶ 79 (pointing to the importance of identifying a durable solution for unaccompanied children, including family reunification and return); see generally *Safe & Sound*, *supra* note 31, at 22 (describing what a durable solution entails in the context of the unaccompanied or separated children).

184. See Wenke & Heiberg, *supra* note 74, at 59 (calling for the continuous update on the information of the child's care arrangements and development).

185. See *Safe & Sound*, *supra* note 31, at 46 (explaining that durable solutions can take many forms as the main concern is the best interests of the child); see, e.g., *Comment No. 6*, *supra* note 30, ¶¶ 82–83 (exploring a possibility of rejecting family reunification in the country of origin if doing so would expose the child at risk, such as violence).

186. *Comment No. 6*, *supra* note 30, ¶ 82.

187. See International Covenant on Civil and Political Rights, *Communication No. 1143/2002*, ¶ 6.3 CCPR/C/90/D/1143/2002 (Aug. 31, 2002) (stating a person granted refugee status cannot reasonably be expected to return to his country of origin).

188. See Phillip Czech, *A Right to Family Reunification for Persons Granted International Protection? The Strasbourg Case-law and EU Harmonisation*, E.U. MIGRATION LAW BLOG (June 17, 2016), <http://eumigrationlawblog.eu/a-right-to-family-reunification-for-persons-under-international-protection-the-strasbourg-case-law-state-sovereignty-and-eu-harmonisation-2/> (listing recent cases that found in favor of family unification rather than migration restrictions).

189. Council Directive 2003/86/EC of 22 September 2003 on the Right to Family Reunification, art. 10, 2003 O.J. (L 251) 16.

unaccompanied minors, the state responsible to examine the asylum application is the member-state where a family member or a sibling is legally present, while an assessment on whether the relative can take care of the child is conducted based on his/her best interest.<sup>190</sup>

Similarly, the ECtHR appears to have shifted its approach on family reunification issues,<sup>191</sup> adopting a more “weight and balance method.”<sup>192</sup> Although Article 8 does not to impose a general obligation on the state to authorize family reunification in its territory,<sup>193</sup> the existence of *particular circumstances*<sup>194</sup> and namely, strong family ties in the state party;<sup>195</sup> insurmountable obstacles for the family living in the country of origin; extended family rupture<sup>196</sup> have led the Court to assume a right to family reunification life. The expansion of the Article’s applicability in such cases signifies the move towards a more liberal position, that aims to guarantee that family life is not circumvented, in cases of migration.

## F. SEARCH FOR DURABLE SOLUTIONS IN A WORLD OF “SECURITIZATION”

### *i. Reinforcing human rights’ applicability*

Today the protection of the human rights of unaccompanied migrant minors appears more difficult than ever. The challenges that states pose to the management of migration flows due to the erection of barriers and the imposition of border control practices prove the imperative need to

190. See Regulation 604/2013, art. 8, 2013 O.J. (L 180) 31, 39 (EU) (focusing on the significance of both the presence of family members of an unaccompanied child and the child’s best interest when examining the child’s asylum application).

191. Czech, *supra* note 188.

192. See *Da Silva v. Netherlands*, 2006-I Eur. Ct. H.R. 223, 234–35.

193. *Jeunesse v. the Netherlands*, App. No. 12738/10, Eur. Ct. H.R. 1, 30 (2014), <http://hudoc.echr.coe.int/eng?i=001-147117>.

194. *Gül v. Switzerland*, App. No. 23218/94, Eur. Ct. H.R. 1, 16 (1996), <http://hudoc.echr.coe.int/eng?i=001-57975>.

195. *Jeunesse v. the Netherlands*, App. No. 12738/10, Eur. Ct. H.R. at 30

196. *Da Silva v. Netherlands*, 2006-I Eur. Ct. H.R. at 235; see also Eur. Ct. H.R., *Guide on Article 8 of the European Convention on Human Rights: Right to Respect for Private and Family Life, Home and Correspondence*, at 67 (2016), [https://www.echr.coe.int/Documents/Guide\\_Art\\_8\\_ENG.pdf](https://www.echr.coe.int/Documents/Guide_Art_8_ENG.pdf). (explaining that factors to be taken into account include rupture of family life and extent of ties to Contracting State).

reinforce human rights in all their aspects.<sup>197</sup> The so-called non-entrée policies, such as extraterritorial interception activities, removal procedures, the ‘safe third country’ construction, raise serious concerns on human rights implementation.<sup>198</sup> Jurisdiction of states, as perceived in its traditional form,<sup>199</sup> is now contested in view of these elusive migration practices. Territorial restriction of states’ obligations does not appear as an option, since the extraterritorial application of human rights, already established both in the international<sup>200</sup> and regional practice<sup>201</sup> and jurisprudence, can counteract existing protection inconsistencies.

In the emblematic case of *Hirsi Jamaa v. Italy*, the ECtHR denied Italy’s allegation that it lacked jurisdiction since it allegedly performed a “rescue” operation on the high seas under the terms of UNCLOS.<sup>202</sup>

197. See Bill Frelick et al., *The Impact of Externalization of Migration Controls on the Right of Asylum Seekers and Other Migrants*, 4 J. MIGRATION & HUM. SEC. 190, 209–10 (2016) (arguing that the externalization of migration controls can be rights-threatening and increased support should be provided to organizations that promote migrant rights instead).

198. See *id.* at 193–96 (describing the various methods employed by states to prevent migrants from entering a territory); see also, Violeta Moreno-Lax, *The Legality of the ‘Safe Third Country’ Notion Contested: Insights from the Law of Treaties*, in 16 MIGRATION AND REFUGEE PROTECTION IN THE 21ST CENTURY: INTERNATIONAL LEGAL ASPECTS 665, 719–21 (Guy S. Goodwin-Gill & Phillippe Weckel, 2015) (arguing that “safe third country” notion should be abandoned in favor of states pursuing legitimate aims of asylum management).

199. See Eibe Riedel, Gilles Giacca & Cristophe Golay, *The Development of Economic, Social, and Cultural Rights in International Law*, in ECONOMIC, SOCIAL AND CULTURAL RIGHTS IN INTERNATIONAL LAW: CONTEMPORARY ISSUES AND CHALLENGES 3, 18–20 (Eibe Riedel, Gilles Giacca & Cristophe Golay eds., 2014) (explaining that while a state has a direct obligation protect, that responsibility becomes an indirect responsibility to ensure others do not violate human rights agreements).

200. See Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136, ¶ 137 (July 9) (stating that Israel breached its obligations under international humanitarian law by constructing a wall through a territory where Palestinians resided).

201. *Coard v. U.S.*, Case 10.951, Inter-Am. Comm’n H.R., Report No. 109/99, OEA/Ser.L/V/II.106, doc. 6 rev. ¶ 37 (1999).

202. *Hirsi Jamaa and Others v. Italy*, 2012-II Eur. Ct. H.R. 97, 133; United Nations, Convention on the Law of the Sea art. 98, Dec. 10, 1982, 1833 U.N.T.S. 397; see also Violeta Moreno-Lax, *Hirsi Jamaa and Others v Italy or the Strasbourg Court versus Extraterritorial Migration Control?*, 12 HUM. RTS. L. REV. 574, 581 (2012) [hereinafter Moreno-Lax, *Jamaa and Others v Italy*] (explaining that *de jure* control in addition to *de facto* may be decisive in establishing extraterritorial jurisdiction).

Instead, the Court based on its previous case-law<sup>203</sup> found that Italy exercised “de jure and de facto control” over the 200 migrants that embarked and handed over to the Libyan authorities.<sup>204</sup> Similarly, in the joint operations conducted by states and border or coast guard agencies<sup>205</sup>—even such are conducted outside the defined borders—applicability of children’s human rights should be set clear. Only through the comprehensive amendment of the mandates of said agencies and the establishment of a share responsibility scheme,<sup>206</sup> modern societies can reach the above rights for children.

In light of the recent *General Comment no. 36* on the right to life,<sup>207</sup> it is easily deduced that human rights protection tends to go further from their traditional implementation. HRC acknowledged “*impact*” that state activities may have on individual human rights as a form of exercise of power by the state, thus contributing to the universal application of obligations arising out of the Covenant, within their territory and abroad.<sup>208</sup> Subsequently, states’ practices of non-entrée and “contactless”

203. *Medvedyev v. France*, 2010-III Eur. Ct. H.R. 61, 94.

204. *Hirsi Jamaa and Others v. Italy*, 2012-II Eur. Ct. H.R. at 133.

205. See *European Border and Coast Guard Agency (Frontex)*, EUROPA, <https://europa.eu>, [https://europa.eu/european-union/about-eu/agencies/frontex\\_en](https://europa.eu/european-union/about-eu/agencies/frontex_en) (last visited Sept. 14, 2019) (defining the terms “joint operations” and “joint returns”); see European Commission, *State of the Union 2018*, (Sept. 12, 2019), [https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-coast-guard\\_en.pdf](https://ec.europa.eu/commission/sites/beta-political/files/soteu2018-factsheet-coast-guard_en.pdf) (explaining the agency’s ability to launch joint operations and deploy staff outside of the EU).

206. See Melanie Fink, *A ‘Blind Spot’ in the Framework of International Responsibility? Third-Party Responsibility for Human Rights Violations: the Case of Frontex*, in HUMAN RIGHTS AND THE DARK SIDE OF GLOBALISATION: TRANSNATIONAL LAW ENFORCEMENT AND MIGRATION CONTROL 272, 273 (Thomas Gammeltoft-Hansen & Jens Vedsted-Hansen eds., 2017) (arguing that original and derivative third party responsibility can fill the “gap” in human rights violations in multinational actions by attributing responsibility for those violations to specific parties).

207. See Hum. Rts. Comm’n, *General Comment No. 36: Article 6: Right to Life*, U.N. Doc. CCPR/C/GC/36 ¶ 22 (2019) (explaining that states must take measures to ensure activities in their own territories that have direct or reasonably foreseeable impacts on the right to life of those outside are consistent with Article 6).

208. See Daniel Møgster, *Towards Universality: Activities Impacting the Enjoyment of the Right to Life and the Extraterritorial Application of the ICCPR*, EJIL: TALK! (Nov. 27, 2018), <https://www.ejiltalk.org/towards-universality-activities-impacting-the-enjoyment-of-the-right-to-life-and-the-extraterritorial-application-of-the-iccpr/> (arguing that the “impact” model may reduce inconsistencies in ECtHR opinions and strengthen compliance with human rights obligations abroad).

supervision of external borders—especially when they directly or indirectly affect the lives of migrant children travelling alone—should be examined based on said applicability rules. Having established a cohesive approach on when and how human rights of migrant children apply, should we hope for an immediate eradication of current protection gaps and the implementation of viable solutions in the best interest of the child.

*ii. Building “life projects” for children*

The reach of durable solutions for unaccompanied minors, who have gone through immigration and asylum procedures, was ingeniously conceptualized by the Committee of Ministers of the Council of Europe on its recommendation to member states on life projects for unaccompanied migrant minors.<sup>209</sup> Aiming at lasting solutions guaranteeing a better future for the child, a “life project” is an individual tool based on the planning and implementation of the actual objectives related to social integration of minors, personal and cultural development, housing, health, education, etc.<sup>210</sup> However, what renders a life project a valuable apparatus in confronting the challenges of modern migration crisis is its structural composition. The individualized nature and the comprehensive, interdisciplinary approach of said projects enlighten every effort made on the development of protection law and practices.<sup>211</sup>

The child—irrespective of his/her status under refugee and other provisions, the state that is or will be involved or the decisions pending—

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209. See EUR. CONSULT. ASS., *Recommendation of the Committee of Ministers to Member States on Life Projects for Unaccompanied Migrant Minors*, CM/Rec (2007)9 (July 12, 2007) (explaining that unaccompanied migrant minors should enjoy all rights recognized by relevant standards as preconditions for the realization of their life projects); see generally Louise Drammeh, Council of Europe, *Life Projects for Unaccompanied Migrant Minors: A Handbook for Front-Line Professionals* (2010) (providing an overview of life projects and guidance for the successful implementation of the projects).

210. See Wenke & Heiberg, *supra* note 74, at 59–60 (summarizing the purpose of life projects).

211. See *Recommendation of the Committee of Ministers to Member States on Life Projects for Unaccompanied Migrant Minors*, *supra* note 209 (explaining that the diversity of unaccompanied minors must be considered through a multidisciplinary approach and describing the ability of life projects to provide a long-term response to the needs of the minor and other concerned parties).

should be the center of the entire solution mechanisms. Identification of the child's specific situation and precisely, of his/her individual needs and best interests (that in our case entail the indispensable part of achieving family reunification) is the pillar upon which a child-oriented solution shall be premised.<sup>212</sup> The Separated Children in Europe Programme, for example, encourages state officials to obtain the required capacity to promptly identify children, victims of human trafficking.<sup>213</sup> Such an immediate tracing and assessment of the special risks for the child in case of human trafficking impedes further exposure and determines future measures to be taken in favor of his/her welfare.

In Sweden, emergency services operating on the municipal level make the first assessments of the child's situation and decide whether emergency placement shall take place or not, while in Ireland identification of an unaccompanied minor triggers the direct involvement of the Child and Family Agency (CFA), that provides for health and social services designated for these children.<sup>214</sup> In this context, multidisciplinary and inter-agency cooperation emerges as a fundamental factor in building long-term solutions.<sup>215</sup> Immigration cases, especially when children are involved, require organized actions of various authorities, including police officers, border guards, social welfare institutions, judicial organs, specialized professionals, etc.<sup>216</sup> Effective partnership and involvement can contribute in creating a common

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212. See *Safe & Sound*, *supra* note 31, at 27–28 (explaining that an at-risk unaccompanied child must first have his or her best interests assessed).

213. See Save the Children [SC] & Separated Children in Europe Programme [SCEP], *Position Paper on Preventing and Responding to Trafficking of Children in Europe*, at 5 (2007), <https://www.refworld.org/pd/545ca8264.pdf> (explaining the complexity of determining the extent of child trafficking in Europe and identifying and referring child victims to services).

214. See *Safe & Sound*, *supra* note 31, at 26–27 (comparing the unaccompanied child assessment practices in Ireland and Sweden).

215. See Olivia Lind Haldorsson, Council of the Baltic Sea States Secretariat and Child Circle, *European Barnahus Quality Standards: Guidance for Multidisciplinary and Interagency Response to Child Victims and Witnesses of Violence*, at 8 (June 2001) [hereinafter *European Barnahus Quality Standards*], <http://www.childrenatrisk.eu/promise/wp-content/uploads/2017/06/PROMISE-European-Barnahus-Quality-Standards.pdf> (emphasizing that although challenging, multidisciplinary and interagency collaboration is crucial to fulfilling the rights of child victims).

216. See Wenke & Heiberg, *supra* note 74, at 25–26 (providing an overview of the numerous officials and agencies involved in transnational child protection cases).

understanding of unaccompanied minors' protection.<sup>217</sup>

Local integration, resettlement to a third country or even return and reintegration in the country of origin<sup>218</sup> may all comprise sustainable solutions for unaccompanied minors, especially when such processes are the result of a collective venture. Coordinated assessment, planning and management of child-sensitive cases ensure that human rights and freedoms of the child are given due weight during all stages of migration procedures. The Child Protection and Adoption Service in Lithuania promoting cooperation and information exchange within its territory and abroad;<sup>219</sup> the Children's House model in many countries, such as Denmark, Iceland and Sweden, providing multi-disciplinary services to children under the same roof;<sup>220</sup> and the Praesidium project on the management of mixed migration flows in seaports of arrival launched as an Italian imitative in cooperation with UNHCR, IOM, Safe the Children, the Red Cross<sup>221</sup> are recent examples of the positive impact inter-agency and multi-disciplinary cooperation can have on the migration crisis.

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217. See Int'l Committee of the Red Cross [ICRC], *Inter-agency Guiding Principles on Unaccompanied and Separated Children*, at 18–19 (2004), <https://www.icrc.org/en/publication/1101-inter-agency-guiding-principles-unaccompanied-and-separated-children> (emphasizing the importance of dialogue and coordination among organizations throughout the process of providing assistance to separated children).

218. See *Action Plan on Unaccompanied Minors*, *supra* note 174, at 12–13 (providing guidance for the process of returning a child to his or her country of origin and explaining that in many cases return may be in the best interest of the child).

219. See Daja Wenke, Council of the Baltic Sea States Secretariat, *Family Support and Alternative Care in the Baltic Sea Region*, at 77–78 (Jan. 16, 2013), [https://www.cbss.org/wp-content/uploads/2013/01/Family\\_Support\\_and\\_Alternative\\_Care\\_-\\_Background\\_Paper\\_2015.pdf](https://www.cbss.org/wp-content/uploads/2013/01/Family_Support_and_Alternative_Care_-_Background_Paper_2015.pdf) (explaining the structure of the Child Protection and Adoption Service in Lithuania and its practices and data management within Lithuania and abroad).

220. See *European Barnabus Quality Standards*, *supra* note 215, at 12–13 (explaining the ability of the Barnabus method to produce valid evidence without re-traumatizing children).

221. See UNHCR, Pol'y Dev. & Evaluation Serv. [PDES], *Refugee Protection and International Migration: A Review of UNHCR's Operational Role in Southern Italy*, PDES/2009/05, at 1 (Sept. 2009) (describing the Praesidium project and its framework).

#### IV. CONCLUSION

Extensive migratory flows of unaccompanied minors crossing international borders have become one of the most complex and challenging aspects of modern migration crisis.<sup>222</sup> When dealing with migrant children travelling alone, deprived of the care and protection of family, the adult paradigm, as set by international refugee law, must be left aside. The conceptualization of the “unaccompanied minors” notion leads to the acknowledgment of a child-centric approach on the protection of this specific group of migrants. CRC, the fundamental instrument on the human rights of the child, providing for states’ primary obligation to protect the best interests of all children under their jurisdiction and regardless of the child’s specific status, shall constitute an autonomous source of international protection for unaccompanied migrant minors.

In view of the specifically vulnerable status of unaccompanied children and the challenges the “sovereign identity” of states pose nowadays, the structure of an integrated protection scheme based on common, universal standards appears as an imperative. According to the main findings of the present article, for said protection to be achieved the previous review and empowerment of unaccompanied minors’ fundamental rights, including the principle of non-refoulement, access to care and accommodation, guardianship, legal representation, access to asylum as well as family reunification, is necessary. Only through enforcement of said rights, the risk of unaccompanied minors to be subject to further abuse and exploitation can be minimized. As the 2018 *Global Compact for Safe, Orderly and Regular Migration* reiterated, the call for commitment to a common understanding as well as mitigation of migration risks through responsibility-sharing requires the recognition of children as individuals with unique interests and vulnerabilities.<sup>223</sup>

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222. See *A Child is a Child*, *supra* note 161, at 6–7 (summarizing the mass movement of unaccompanied minors, the struggle for states to meet the needs of those children, and the recognition that many of those needs are urgent and unmet).

223. See G.A. Res. 73/195, ¶ 15 (Dec. 19, 2018) (stating that the primary consideration in situations involving children in international migration is the best interests of that child).